A DISCOURSE CONCERNING *Bonds of Resignation* OF BENEFICES, In Point of *LAW* and *CONSCIENCE.*

By the Right Reverend Father in God
EDWARD Lord Bishop of *Worcester.*

LONDON,
Printed by *J. H.* for *Henry Mortlock*
at the *Phœnix* in St. *Paul's*
Church-Yard. 1695.

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THE PREFACE.

THE Intention of Writing and Publiſhing the following Diſcourſe, was to give a ſtop, if poſſible, to a Dangerous and Prevailing Practiſe; and ſo much the more Dangerous, becauſe it is managed with ſo much Secrecy, and Perſons are often drawn into it, before they are aware of the Miſchief of it. They are told, "That "there is no Law againſt it; and "that there are Adjudged Caſes and "Precedents in Law for it; and that "there is nothing amiſs in the Bond of "Reſignation it ſelf: but if there be "any corrupt or evil Practice after it,

" *that makes it fit to be condemned in*
" Equity, *but not in* Law. *But a general Bond of Reſignation of a Benefice upon Notice, in order to the obtaining a Preſentation to that Benefice, hath ſuch a* Simoniacal *Appearance; that any perſon who pretends to Conſcience cannot but think it neceſſary to Examine, how far ſuch a Practice can be conſiſtent, not only with the Law, but with the Oath which he is to take againſt* all Simoniacal Contracts and Promiſes, directly or indirectly *&c.* for or concerning the procuring or obtaining the Rectory or Vicarage of *&c. How can any man that enters into theſe Bonds, ſay that he doth it not in order to the* Obtaining *a Preſentation? And doth not ſuch a Bond amount to a* Contract? *How then can they ſatisfy themſelves in taking this Oath after ſuch a Bond? All they can pretend is,* that although it be a Contract

tract for ſuch an End, yet it is no Simoniacal Contract. *But which way are we to be ſatisfied in point of Conſcience, what is a* Simoniacal Contract, *and what not? Is it only from the Statute* 31 Eliz. c. 6. *ſo that what is there forbidden is* Simoniacal *and nothing elſe? But where hath that Law determin'd what* Simony *is, when it is never mentioned in it? It ſeverely prohibits ſome corrupt Practiſes as to Benefices; but it never goes about to reſtrain the Notion of* Simony *to them (as will appear in the following Diſcourſe) and the* Eccleſiaſtical Laws, *as to this matter, are left as they were before. If therefore there be ſuch a true Notion of a* Simoniacal Contract, *as is allowed by our Laws, which is not confined to that Statute; then it muſt follow, that there may be a* Simoniacal Contract, *which is not condemned by that Law: and therefore*

all perſons who underſtand the Nature and Extent of our Laws, will have a care of Reſtraining the Nature of a Simoniacal Contract *to the Letter of that Statute.*

It may be ſaid, " *that a* Simoniacal Contract *is an ill Name put upon we know not what, if we go beyond the Law of the Land: and that there muſt be ſome certain bounds ſet to ſuch hard Words; or elſe the ſnare may be greater another way: and that here is no ſuch thing as Real* Simony *in the caſe; but the Word is applied to ſome indirect Practiſes in obtaining Benefices, but what thoſe are the Law muſt determine. To which I anſwer, that I am very far from going beyond* the Law of the Land *for determining this matter. For I do acknowledge that ſince the Notion of* Simony *is extended beyond the firſt Occaſion of the Name, there muſt be a certain*

certain Rule to determin it; and That I do freely grant is the Law of the Land. *But by it, I do not mean a particular Statute made with reſpect to ſome more notorious Acts, which are puniſhable in the Courts of Common Law; but I underſtand by* the Law of England *that Comprehenſive Body of Laws, which have been here receiv'd, as the Meaſure of our Judgment and Actions in thoſe things which are to be determin'd by them.*

If a Queſtion be made whether a Contract made at Sea be a good Contract; it will be no good Anſwer, to ſay it muſt be a good Contract, becauſe there is nothing in it contrary to the Rules of the Common Law. For, if our Common Law ſhould happen to allow ſuch Contracts, which the Civil Law doth not; will it be ground enough to Affirm, that it is a good Contract becauſe our Common Law doth not condemn it? No

certainly. But it must be determin'd by that Law which is proper for it, and being here receiv'd for such, is in such Cases the Law of the Land.

So I say here; the Eccleſiaſtical Law, ſo far as it is receiv'd and allow'd by the Common Law, is the Rule and Meaſure, whereby the Nature of Simony *is to be determin'd; and that is allow'd by our moſt learned and judicious Interpreters of our Common Law, to be of* Eccleſiaſtical Cogniſance: *only ſuch Acts as come under Statutes belong to the Courts of Common Law. And there was a general Preſumption in Law before, that no Patron was to make any Advantage to himſelf of a Right of Preſentation. And therefore my Lord* Coke 3. Inſt. 156. *ſaith,* That a Guardian in Socage of a Manor whereunto an Advowſon is appendant ſhall not preſent to the Church, becauſe he can take nothing for the Preſentation for the which he may

may account to the Heir: *from whence he infers, that* Simony is odious in the Eye of the Common Law. *And it is very well if it ſo continues; which I can hardly imagine, if theſe* Bonds of Reſignation *prevail. But if by the* Eccleſiaſtical Law, *as received here, ſuch Bonds are* Simoniacal, *being a Contract in order to the obtaining a Preſentation; then it can give little ſatisfaction to any Man's Conſcience to be told*, that they are not againſt Law, *i. e. againſt the* Statute 31 Eliz. c. 6.

My buſineſs is not here to give a full Account of the Matters contained in the following Diſcourſe; but only to remove ſome general Prejudices againſt the Deſign of it. Which is truly no other, than to bring this ſecret Practice into open View, and to have it fairly Examin'd and Diſcuſſed. For, while it is managed in this manner, there is not

only

only Miſchief done to the Church, but to the Conſciences of Men; who are very apt to ſuſpect a Snare in all ſuch Bonds, and are very uneaſie at the thoughts of them afterwards. If there be any better Reaſons to be given for them, than I have yet ſeen; I ſhould be glad to be convinced of the Lawfulneſs of ſuch indirect Practiſes and Private Contracts: but at preſent I think (if they be not timely prevented) they will end in unſpeakable Miſchief to the Parochial Clergy, *who are the main Eccleſiaſtical Body of the Church of* England; *and in whoſe welfare we ought to be all concerned.*

And truly I cannot but be very tender in what relates to Their Rights; *for their Work and Duty is Great and Laborious, if it be performed as it ought to be; and they ought not to have any new Burdens impoſed upon them, under a pretence of Law, which neither they nor their*

their Succeſſors will be able to bear.

I am very ſenſible, how much in this Age depends upon the Faithfulneſs and Diligence and Good Reputation of the Parochial Clergy *of* England. *For I am not much afraid of any Deſigns of our open Enemies (or which may be worſe, of our pretended Friends) if we be true to our ſelves; i. e. if we ſeriouſly and conſcientiouſly do our Duties with reſpect to God, the People, and our own Souls. If we do not give way to unreaſonable Suſpicions and cauſeleſs Jealouſies of one another; if we mind the Intereſt of Religion more than our own, and ſerve God and not our own Luſts; if we ſincerely promote the beſt Ends in the World, the ſaving Souls and doing good to Mankind; God will not be wanting to us: but He that hath ſaved us from the* Lion and the Bear, *will likewiſe ſave us from the* Fox and the Viper; *I mean ſuch who*

under

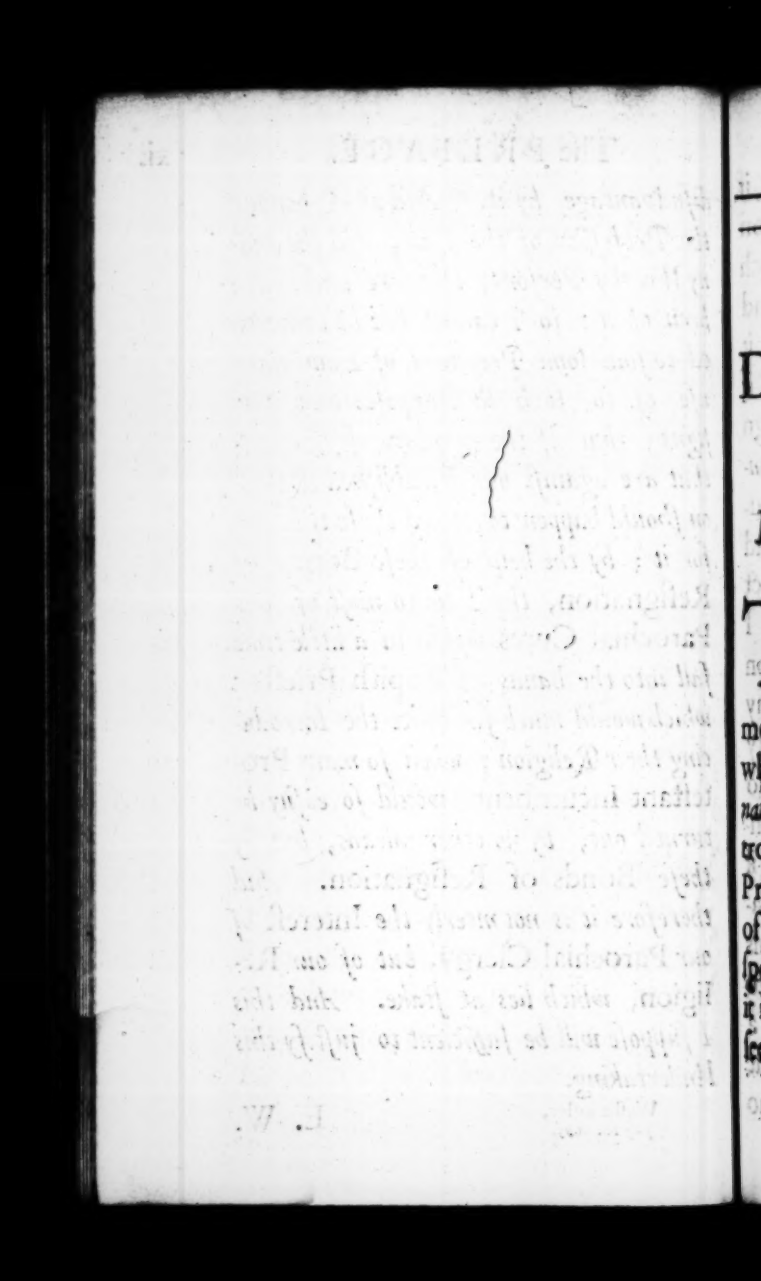
under fair and plauſible pretences eat through the Bowels of their Mother; and by ſecret and indirect Practiſes go about to ruine the Church they profeſs themſelves *to be of: although* by their Works they deny it.

If I had not ſome more than ordinary Reaſon to believe ſuch things to be not only Practiſed but Incouraged by ſuch who pretend, not only to underſtand our Law, but to Direct the Nation in it; I ſhould hardly have undertaken a Task of this Nature. But having ſo juſt an occaſion to ſearch into this Matter, as well as I could, and finding ſo much Cauſe of Diſſatisfaction as to theſe Bonds; I thought it my Duty to doe what lay in me to prevent that Miſchief which is haſtning upon our Church by them. If I am miſtaken in any part of the following Diſcourſe, I ſhall be glad to be better informed: and if I am not, I hope that our Church may receive no diſ-

diſadvantage by it. And as I honour the Profeſſion of the Law, and the many Worthy Perſons, who are and have been of it: ſo I cannot but be concerned to find ſome Pretenſes of Law made uſe of to ſuch ill Purpoſes and Deſigns; that if the number of Patrons that are againſt our Eſtabliſhed Religion ſhould happen to exceed thoſe that are for it; by the help of theſe Bonds of Reſignation, *the Title to moſt of our* Parochial Cures *would in a little time fall into the hands of* Popiſh Prieſts: *which would much facilitate the Introducing their Religion; when ſo many* Proteſtant Incumbents *would ſo eaſily be turned out, by no other means, but by theſe* Bonds of Reſignation. *And therefore it is not meerly the* Intereſt *of our* Parochial Clergy, *but of our* Religion, *which lies at ſtake. And this I ſuppoſe will be ſufficient to juſtify this Undertaking.*

Weſtminſter,
July 10. 1695.

E. W.



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DISCOURSE

CONCERNING

Bonds of Reſignation &c.

THE Deſign of this Diſcourſe, is to Enquire into a Caſe, too commonly Practiſed among us, and too little Examin'd; which is concerning *Bonds of Reſignation* given by Clergymen to Patrons in order to the obtaining a Preſentation to a Benefice with Cure of Souls. This is a Caſe which reſpects both *Law* and *Conſcience*: and it is not ſo eaſy a matter, as ſome ſeem to take it for granted, to Reſolve

ſolve it as to either of them. For if ſuch a Practice be within the Reaſon and Intention of the Law, which forbids all *Corrupt Preſentations* and *Reſignations*, 31 *Eliz. c.* 6. then it cannot be Juſtified by Law; and if it be againſt the Scope and Deſign of the Oath againſt *Simoniacal Contracts*, then it can much leſs be Juſtified in point of Conſcience. And whether it be or not, is the Subject of this preſent Diſcourſe; which I am ſorry there is ſo much occaſion for; but ſince there are too many that Practiſe it, and others too ready to Defend it; and ſince it is of ſo miſchievous Conſequence to the Intereſt of the Church of *England*, if it prevails, I think it highly neceſſary to enquire more ſtrictly into this Matter, than hath been hitherto done. Which I ſhall do in ſuch a manner, as to make it appear that

no

no Conſiderations whatſoever have ſwayed me, but thoſe of *Law* and *Conſcience*; and I hope thoſe who have been drawn into ſuch Snares will ſee cauſe to Repent, (if they do it not already) and others take care how they run themſelves into ſuch Perplexities, which no Precedents in point of Law, and no Authority in point of Conſcience can give them Satisfaction in.

But I intend no Reflections on particular Perſons; and I cannot believe that any who have impartially weighed theſe things can maintain the Lawfulneſs of them ſo, as to wiſh them *generally practiſed*. For, however there may be ſome Caſes wherein ſuch Bonds may be thought far more Reaſonable than in others: yet it cannot be denied that there are far more Caſes, wherein ſuch a Practice muſt be deſtructive to the

Legal Rights of the Church. Suppoſe ſome Patrons to be Perſons of great Piety and Integrity, who do require theſe Bonds only to bind the Clergy the more ſtrictly to do their Duty: ſuppoſe others have no Regard to their own Intereſt, but only take care of Minors, bred up with a proſpect of ſuch Benefices which they are not yet capable of: (which are the moſt Reaſonable Conſiderations inſiſted upon in the Adjudged Caſes:) but what are theſe to the multitude of moſt unjuſt and unreaſonable Conſiderations, which may be made the Conditions of theſe Bonds? For the Bonds are ſuppoſed to be General; and ſo the Patrons left at liberty to impoſe their own Conditions. And, are there no ſuch kind of Patrons among us who may be too juſtly ſuſpected to mind their own Intereſts above the

Churches

Churches Good? and therefore will take all ways to leſſen the Profits of Benefices in their Diſpoſal, as far as they are told that the Law permits them? Such I mean, who have no Reſtraint but what the Law lays upon them, having no Senſe of Honour or Conſcience in theſe matters. And if it once paſs for an allowed Doctrine in Law, that *Bonds of Reſignation* are lawfull; what ſhall ſtop ſuch Men from putting very unreaſonable Conditions upon their Incumbents, or elſe they may preſently call them to an Account for the Forfeiture of their Bonds? If then there be no effectual courſe ſo much as offer'd, againſt very hard and unreaſonable Terms; how can ſuch Bonds be thought Juſt and Reaſonable?

It may be ſaid, *That if the Conditions be ſuch as are allowed by Law,*

then the Bonds are lawfull, otherwiſe not. But this by no means clears the Difficulty. For the main Queſtion is, Whether ſuch Bonds be lawfull, where the Conditions are not expreſſed; but meer notice of three or ſix Months? And theſe are the general Bonds of Reſignation: and ſuch I think I may with Reaſon affirm to be againſt both Law and Conſcience. But ſuppoſe there may be Conditions of both kinds required, but it is not expreſſed in the Bonds what they are: what a miſerable Slavery muſt the Clergy be under, who give general Bonds, and know not what Conditions will be required? And then they muſt go to Law, and be at greater Charge and Trouble than they can well bear, to know whether the Conditions required of them be ſuch as the Law allows or not? So that the general

Allow-

Allowance of Bonds of Reſignation upon Notice, although the Law be left to determine the particular Conditions, is that which we have reaſon to look upon as very hard and unjuſt, and inconſiſtent with the Nature and Deſign of that Relation which the Law ſuppoſes between Patrons and Incumbents, as will appear more afterwards.

There are two things chiefly inſiſted on by thoſe who plead for theſe Bonds of Reſignation:

I. That there is no Law againſt them;

II. That there have been Caſes adjudged for them: and both theſe I ſhall carefully examine.

I. That there is no Law againſt them. There are two Laws to be conſider'd in this matter;

1. The Law againſt Simoniacal Contracts 31 *Eliz*;

2. The Law which requires every Incumbent to take an Oath againſt Simony.

1. As to the Law againſt Simoniacal Contracts: The Statute is expreſly againſt *Preſenting to a Benefice for a Summ of Money, Reward, Gift, Profit or Benefit, directly or indirectly, or entring into Bond or Covenant for that purpoſe*; 31 Eliz. c. 6. n. 5. Wherein theſe things are obſervable:

(1.) That it is not a meer *Summ of Money* which is here forbidden, *but any Benefit whatſoever, directly or indirectly.*

(2.) That not meer *doing* the thing, but *entring into Bond or Covenant to do it* is within the reach of this Law.

(3.) That the Penalty is againſt ſuch *who do Preſent for or by Reaſon of*

of any Promiſe or Agreement for any Benefit whatſoever: or thoſe who do accept ſuch Preſentations on thoſe terms: *i.e.* ſo as it becomes the Motive of ſuch Preſentation or Acceptance.

(4.) That the ſame Law declares *n.* 8. againſt *corrupt Reſigning or Exchanging the Benefice he enjoys, for any Summ of Money or Benefit whatſoever.*

(5.) That the Eccleſiaſtical Cenſures ſtill remain in Force againſt theſe Offences: which ſuppoſes that this Law doth not ſuperſede the Eccleſiaſtical Laws here in being. *n.* 9.

So that here are two material Queſtions to be reſolved upon this Statute.

[1.] Whether ſince the making this Statute, there be any Simoniacal Contract, but what is againſt the Purport of it?

[2.] Whether a Bond of Reſignation, upon which a Benefice is given and accepted, be within the Deſign of it?

[1.] As to the former; it is obſervable that the words *Simony* or *Simoniacal Contract* are never mentioned in this Statute. For, if they had, the Judges would have had ſufficient Reaſon to have declared what was *Simony* and what not. We are told indeed by the Reverend and Learned Judges in the Caſe of *Mackaller* and *Todderick*, *That the Conſideration to have Money to procure one to be Rector of a Church is a Simoniacal Contract, and an unlawfull Act condemned by all Laws: and that the Common Law before the Statute* 31 Eliz. *took notice of it.* But they do not declare how far the Common Law could take notice of it, before that Statute; any farther than that it was not a thing

Cr. Car. 361.

allowed

allowed by it. For certainly it was then of Spiritual Cogniſance: and the Perſons guilty of it were to be proceeded againſt by the Eccleſiaſtical Laws. And conſequently, the Notion of *Simony* is to be taken from thence, and not meerly from this Statute: ſo that if Accepting a Benefice upon giving a Bond of Reſignation were *Simoniacal* before, it doth not ceaſe to be ſo by this Statute. Indeed *corrupt Reſignation* of a Benefice hath not the ſame Penalty by this Statute with *corrupt Acceptance* of it at firſt: for that is a Diſability, and the other double the Value. But hereby we ſee that the one is againſt the Law, as much as the other. So far then it is clear by this Statute, that any *corrupt Reſignation* is againſt Law: and if the Enquiry be after the Penalty, the Statute muſt determine that. But if the Queſtion be

be, Whether Reſignation upon a Bond given before-hand in order to a Preſentation be a *Simoniacal* Act or not, as done in Purſuance of a *Simoniacal Contract*? in That the Statute gives no Rule; but only declares the Penalties of ſome particular Acts, which are there expreſſed.

Thoſe who would have nothing now to be *Simony*, but what is there forbidden, muſt firſt prove that the Intention of the Law was to Limit and Determine the Nature of Simony; which (as is already obſerved) is not ſo much as menti-on'd in it. The Reaſon of the Law as to Penalties is one thing, and the Nature of a *Simoniacal Contract* ano-ther. If a Queſtion be put, whether a *Simoniacal Contract* be void in Law or not? my Lord *Coke* ſaith, *That the Statute doth not make the Bond, Covenant, Promiſe, or other Aſſurance void,*

3. Inſt. 153. Marg.

void, but the Preſentment &c. *and ſo it was adjudged* 40 Eliz. This is ſomewhat ſtrange Doctrine: that a *Preſentment* ſhould be *void* by Reaſon of a *Simoniacal Bond*, and yet that Bond not be void *in Law*. For that which makes another thing void, one would think ſhould be void in it ſelf: eſpecially ſince he ſaith in the ſame Chapter, *That Simony is odious in the Eye of the Common Law.* F. 156. But not ſo very *odious*: if a *Simoniacal Contract* be a good Contract according to the Common Law. But he diſtinguiſheth between *Malum in ſe againſt the Common Law, and Malum prohibitum by Statute Law.* How doth this clear the point? The Preſentation is void, being prohibited by the Statute: But is not a Simoniacal Contract *malum in ſe* againſt the Common Law? how then comes This not to

be

be void? eſpecially ſince it is *contractus ex turpi causâ*: and for that Reaſon my Lord *Hobart* held it void in Law; and ſo the Court held in *Mackaller's* Caſe. But ſuppoſe my Lord *Coke* in the right as to a Simoniacal Contract; that it is not void at Common Law: it follows from thence, that the Conſideration of Law and Conſcience is different in this matter. For I ſuppoſe none will deny that a Simoniacal Contract is unlawfull in point of Conſcience: and yet he aſſerts it, not to be void in Law. Why then may not Bonds of Reſignation, although not within the compaſs of this Statute, yet be unlawful in point of Conſcience: as well as a Simoniacal Contract be unlawful in point of Conſcience, and yet be good by the Common Law? Either therefore Simony, as odious as it is in the

Hob. f. 167.

Cr. Car. 361.

Eye

Eye of the Law, muſt not be *malum in ſe againſt Common Law*, as my Lord *Coke* ſpeaks: or if it be, there muſt be another Rule of Conſcience in this matter from this Statute. I would fain know, what was *Simony* at *Common Law* before this Statute: and whether that which was ſo before doth not continue ſo ſtill, if it be not taken away by it? For, if there be no *Simony* now, but what is expreſſed in that Statute: then it muſt declare; what is *Simony* and what not. *Simony*, ſaith my Lord *Coke*, *is deſcribed by this Act*, 31 *Eliz.* and he ſaith in his Margin, *Injuſtum eſt illa vendere, quæ gratis diſtribui debent*: which is a very good Illuſtration of it. But the Queſtion is, what is meant by *Selling*? whether it be meerly for a Summ of Money, paid down, or ſecured by Bond or Covenant? or whether it doth not take

take in any kind of Benefit or Emolument accruing to the Perſon who beſtows it, which hinders it from being a Free Gift? The Caſuiſts ſay, *Nomine emptionis & venditionis intelligitur omnis contractus non gratuitus.* But can that be called a Free Gift, where there is a Bond of Reſignation of ſuch a thing, whereof the Poſſeſſion and Reverſion bear a Price, and have a real Value? We need not run to *Simon Magus* to underſtand what *Turpe Commercium* is. There were many Laws among the old *Romans* againſt purchaſing any Publick Offices; and they thought it a great Reproach to them for any Price to be ſet upon them: as the great *Roman* Maſter ſaid, *Pretium quod habet, hoc ipſo vileſcit.* By the Laws *Acilia*, and *Calpurnia*, all that were Convict of giving Money for Offices, were under a Diſability, or

Sylveſtr. v. *Simon.*

Sigon. de Judic. l. 2. c. 30.

Quintil. l. 12.

V. Ciceron. pro Plancio. Dion. l. 36.

or Incapacity of any for the future; and the *Mercatores Poteſtatum* were Infamous by their Laws. *Ariſtotle* thought it a matter of very ill Conſequence to any Government to have any thing of Money given for Offices: becauſe it taught men to ſet a greater value on Money than Vertue. Theſe Conſiderations, ſetting aſide the Story of *Simon Magus*, were great enough to induce the Chriſtian Church to be extremely Nice and Tender in this matter of Benefices: and not only to forbid the direct Sale of them for Money; but any indirect Trafficking which might take off the entire Freedom of the Preſentation of Perſons to them. I know to how little purpoſe it would be, to reckon up all the Canons which have been made in the Chriſtian Church from the Apoſtles Times downwards againſt *Simony*;

Lamprid. in *Alex. Sever.* *Ariſt. Pol.* l. 2. c. 12.

Simony: becauſe ſome will ſay, *That the Eccleſiaſticks were always true to their own Intereſt.* But let us ſet aſide all Prejudice in this matter, and conſider it Impartially. If any Offices in the World ought to be free from the Suſpicion of *Sordid Trafficking*: certainly thoſe of the Church ought, from the Nature and Deſign of their Imployments. The Queſtion then will come to this, Whether giving a Bond of Reſignation in order to the Procuring a Benefice, be ſuch a Trafficking or not? And we have three Rules to Judge by:

1. The Nature and Reaſon of the thing: whether ſuch Actings be not inconſiſtent with that Freedom, which ought to be uſed, both in Giving and Taking Eccleſiaſtical Benefices? So that, if there were no Laws either Eccleſiaſtical or Civil in the Caſe; whether there be not ſome-

something in these Transactions unbecoming the Design and Dignity of the Employment?

2. The Ecclesiastical Law of *England*; which hath been from time to time receiv'd here and allow'd by a general Consent; and still continues in Force, where it is not repugnant to any Laws of the Realm: which cannot be pretended in this Case.

3. The Statute-Law; which doth not abrogate the Ecclesiastical Law as to *Simony*: it only Enacts some particular Penalties on some more Remarkable Simoniacal Acts, as to Benefices and Orders; but never once goes about to Repeal any Ecclesiastical Laws about Simony, or to determin the Nature and Bounds of it.

[2.] But let us come more closely

to the Statute it ſelf; to ſee whether theſe Bonds of Reſignation be not againſt the Deſign of it. The Words are, *If any Perſon for any Summ of Money, Reward, Gift, Profit or Benefit, directly or indirectly; or for or by reaſon of any Promiſe, Agreement, Grant, Bond, Covenant, or other Aſſurance of or for any Summ of Money, Gift or Profit whatſoever, directly or indirectly; ſhall Preſent &c.* Now we ſuppoſe a Patron to Preſent one to a Benefice, without any Money, or Bond for Money; but he declares before his Preſenting him, that he muſt enter into a Bond to Reſign his Benefice upon ſix months Notice under a ſevere Penalty: to which he ſubmits, on the Condition of obtaining his Benefice. After this, the Patron demands ſuch a Portion of Tythes; or a Conſent for him to Incloſe, to the appa-

rent

rent Benefit of the Patron, and Diminution of the Profits of the Living. The Question is, Whether such a Bond be within the Design of this Statute? All that can be said is, that no such Consideration is expressed in the Bond, which is in General Terms: which implies, that if the Consideration had been Expressed in the Bond, it had been plainly against the Law. But suppose it be left out of the Bond: is not the Penal Summ of the Forfeiture of the Bond sufficient to make the poor Incumbent comply with the Terms proposed afterwards? If none but just and reasonable things had been intended; why were they not clearly expressed in the Bond it self, so as to prevent any Fear or Jealousy of worse Designs? Have no such things ever been practised, or heard of among us? If there had not;

doth it not look like a Contrivance to Deceive the Law, and to hamper the Conſciences of thoſe who take Benefices? And whatever is done *in Fraudem Legis*, is againſt Law: for it fruſtrates the main Intention and Deſign of a Law without breaking the Letter of it; which is the worſt way of defeating a Law.

But we are told, *That our Courts of Law are to judge according to the Law; and not according to an Equitable Conſtruction of the Intention and Deſign of it.* If it be really ſo; it doth only ſhew that ſuch Courts are under a ſtrange Limitation, which are tied up to the Letter of a Law, againſt the main Scope and principal End of it. But by the Judges Oath 18 *E.* 3. *n.* 2. 20 *E.* 3. *n.* 1. they are bound *to do Equal Law and Execution of Right to all the King's Subjects*

Subjects &c. What is here meant by *Equal Law?* Is it to purſue the Letter of the Law againſt the Reaſon and Deſign of it?

There are two ſorts of *Equity* to be conſider'd among us;

1. An *Equity* founded upon a Reaſonable Conſtruction of Law, according to the Intention of it:

2. An *Equity* for which the Common Law hath made no Proviſion; as in Caſes of *Fraud*, *Accident* and *Truſt*: which is the true Foundation of the *Court* of *Equity* in *Chancery*; viz. to ſupply the Defects of our Law in thoſe Caſes.

The Queſtion now is, Whether the Judges at Common Law are ſo tied up to the bare Letter of it, that they cannot take-in ſuch Caſes, which are according to the Reaſon of a Law, but not within the Words of it? And my Lord *Coke* allows

this ſort of *Equity*. For, ſaith he, 1. Inſt. 24. b. *Equity is a Conſtruction made by the Judges, that Caſes out of the Letter of a Statute, yet being within the ſame Miſchief or Cauſe of making of the ſame, ſhall be within the ſame Remedy that That Statute provideth.* Theſe are remarkable Words of this great Oracle of the Law, and ought to be well weighed and conſidered in all ſuch Caſes as this. And he afterwards ſaith, that *Equity is the Reaſon of the Law, which weighs Caſes according to their due Meaſures*; and ſo gives *in paribus rationibus paria Jura & Judicia.* If then theſe Bonds of Reſignation are within the Reaſon of this Law, and tend to the ſame Miſchief; they ought to have the ſame Remedy: and it cannot be made any juſt Plea for them, that they are not within the Letter of the Law.

II. I now

II. I now come to conſider the *Oath againſt Simony*, which every Incumbent is bound to take; which runs in theſe words: *I, A.B. do ſwear that I have made no Simoniacal Payment Contract or Promiſe, directly or indirectly, by my ſelf or by any other, to my Knowledge or with my Conſent, to any Perſon or Perſons whatſoever, for or concerning the procuring or obtaining of the Rectory or Vicarage; nor will at any time hereafter perform or ſatisfy any ſuch kind of Payment, Contract or Promiſe, made by any other without my Knowledge or Conſent.*

Simony, ſaith my Lord *Coke*, *is the more odious, becauſe it is ever accompanied with Perjury; for the Preſentee is ſworn to commit no Simony.* 3. Inſt. 156.

Here are two things fit to be conſidered:

1. That the Oath is not meerly againſt direct *Simony*; but againſt any *Simoniacal Contract* for obtaining a Benefice.

2. That this Oath is not limited to the Statute 31 *Eliz.* nor made in purſuance of it; but was in being long before: and therefore muſt have its Interpretation from the *Eccleſiaſtical Law*, as it was here receiv'd; and not from the words of the Statute, which do not mention a *Simoniacal Contract*. We muſt then enquire what was a *Simoniacal Contract* by our *Eccleſiaſtical Law*.

Noy 25.

C. de jurejur. Preſent. ſtat.

In our Provincial Conſtitutions, which were receiv'd as part of our Law relating to Eccleſiaſtical Matters, there is one about an Oath to be taken by every one preſented before the Biſhop: *That for the obtaining the Preſentation he had neither promiſed nor given any thing to him that preſented*

preſented him; nec aliquam propter hoc inierit pactionem; nor enter'd into any Bond or Covenant for that end: not a Covenant, to pay a Summ of Money, but to obtain the Preſentation. *Propter hoc*, ſaith *Lyndwood*, *ſc. ut præſentetur*: and he declares it before, that whatever is done with an Intention to induce the Patron to preſent, is *Simoniacal*; and whatever Compact any enter into for that purpoſe, is a *Simoniacal Contract*. Nay he goes ſo far as to ſay, the doing Any thing with that Deſign to obtain a Benefice makes it a *Mental Simony*: (which reaches not to the Oath, and requires no more but Repentance) but if there be a Bargain between the Patron and the Party to be preſented, he declares it to be a *Simoniacal Contract*. He puts the Queſtion, If a Perſon offers to ſerve a Patron for a Year or two, with that Intention

Lyndw. f. 56.

Intention to obtain the Preſentation to ſuch a Benefice by it, Whether ſuch a one can with a ſafe Conſcience take the Oath? He anſwers Negatively, If this were his principal Deſign, and there were a Bond or Covenant between them to that purpoſe: for this were *Simony*. From whence it follows; that any Bond or Covenant enter'd into for that End, to obtain a Preſentation, was *Simoniacal* according to the ſenſe of our Law Eccleſiaſtical.

In the time of Archbiſhop *Courtney*, the Form of the Oath was more full and expreſs, as it is extant in the Archbiſhop's Regiſter called *Morton*, and in *Spelman's Councils*: for there is this Clauſe added, *That neither themſelves nor any Friends of theirs are under any Bonds about the Reſignation or Exchange of their Benefices.* Here the Oath is expreſs againſt *any Bonds*

of

of Resignation. But why is this Clause left out since? Because it was supposed to be sufficiently implied in the other Words: since this was at least an indirect *Simoniacal Contract.*

It may be said, "That Men "are not now tied up to the Canonists Opinions about *Mental* and "*Conventional Simony*: for our Law "owns nothing but *real Simony*; "i. e. either Actual Payment, or a "Bond to pay such a Summ of "Money to obtain a Presentation: "and if there be no Contract for "that End, it is no *Simoniacal Con-*"*tract* according to our Law.

This is all that can be said in this Case: but I think it can give no considering Man satisfaction. For the Intention of the Law, in being so strict and severe against all *Simoniacal Contracts*, was twofold:

1. To

1. To preſerve the Dignity of the Sacred Function; which could never be upheld, if mean and ſordid Trafficking were allowed as to Benefices. For the People can never have any due Reſpect or Veneration for a Perſon, whom they ſuſpect to have come into his Place among them by indirect Practiſes; although it be not the Payment of ſo much Money. For they have ſo much Senſe as to know, that what is valuable by Money is as good as Money according to its proportion: and if a Man gives a Bond to Reſign his Living upon Notice; they know how much this abates of the Value of it to him, when he holds it on ſuch a Precarious Title: and that he gives ſo much to obtain the Living, as it is of leſs Value to him, than if he had it without any ſuch Bond. He that is forced by a Bond

to

to reſign his Benefice, muſt part with what was really valuable to him; as much as the Poſſeſſion of it for ſo many years, as he might otherwiſe enjoy it, would come to: and he that gives a Bond to that purpoſe to obtain a Preſentation, doth oblige himſelf to give to the Patron ſo much as that Intereſt can be valued at. Is not a free unconditional Intereſt in a Benefice really more valuable, than that which depends on the Pleaſure of another? If it be; then he that gives a Bond of Reſignation, doth give ſomething really valuable in Money, to obtain the Preſentation. And how can this be excuſed from *Simony*? Yes; ſome may ſay, *Simony* is only a frightfull Word uſed by *Eccleſiaſticks* to deter people from making the beſt of their own: whereas the true Notion of *Simony* is only *buying the Gifts of the Holy*

Holy Ghoſt: but what Relation is there between the *Gifts of the Holy Ghoſt* and a *Benefice*?

I do not think there are any ſo weak, as to imagine *the Gifts of the Holy Ghoſt* can be purchaſed with Money given to Patrons: and if they could, the Dealers in ſuch Bargains would not think them worth their Money; which they could lay out upon things of greater value to them. But here lies the true ſtate of the Caſe. It hath been the Wiſdom and Charity of Princes and other Perſons of Eſtates, to make Endowments of Parochial Churches for the Support and Incouragement of thoſe in Holy Orders to attend upon the Service of God in them: and the Law of the Land hath ſo annexed the Spiritual Duty with the Temporal Advantage, that no one can be capable of the latter, that is not

not obliged to the other. So that the Right of Discharging a Spiritual Trust and the Right of Enjoying the Profits go together. But to prevent the unspeakable mischief of Purchasing the Profits which are devoted to such a Spiritual use, this hath been called by the detestable Name of *Simony*: and very severe Laws have been made, not only against the giving of Money, but the using of any indirect means to obtain a Presentation. Because such things do lessen the Esteem of those who use them; and not only thereby make them more uncapable of doing Service, but expose the Sacred Function it self to Contempt.

2. Another great End of these Laws, is to keep the Clergy from Oppression and Slavery. I am far from going about to lessen the Just and Legal Rights of Patrons; who by

by our Laws enjoy ſome Privileges, which are not allowed them in other Countries, where the Eccleſiaſtical Law is ſtricter than here in *England*: as in the liberty of Selling the Rights of Advowſons; their Trial at Common Law; the ſix Months for Patrons &c. But for our right underſtanding the preſent matter, it muſt be conſider'd, as to the Rights of Patrons, That it was not an Original and Abſolute Right to diſpoſe of Benefices as they pleaſed; but a limited Truſt repoſed in them, to put in Fit Perſons to Diſcharge the Duties of their Places. It is very well known to all perſons who have looked into theſe matters, that in the firſt Settlement of this *Church of England*, the Biſhops of the ſeveral Dioceſes had them under their own immediate Care; and that they had the Clergy living in a Community

munity with them, whom they ſent abroad to ſeveral parts of their *Dioceſes*, as they ſaw occaſion to Imploy them: but that by Degrees, they ſaw a neceſſity of fixing Presbyters within ſuch a Compaſs, to attend upon the Service of God among the People that were the Inhabitants: that theſe Precincts which are ſince called *Pariſhes*, were at firſt much larger, and caſt into ſuch Diviſions in each Dioceſe, as probably make up the ſeveral *Deaneries* ſince: that when Lords of Manors were inclined to build Churches for their own Conveniencies, they found it neceſſary to make ſome Endowments, to oblige thoſe who officiated in their Churches to a diligent Attendance: that upon this, the ſeveral Biſhops were very well content to let thoſe Patrons have the Nomination of Perſons to thoſe Churches; provided

they were ſatisfied of the Fitneſs of thoſe Perſons, and that it were not deferred beyond ſuch a limited time. So that the Right of Patronage is really but a limited Truſt; and the Biſhops are ſtill in Law the Judges of the Fitneſs of the Perſons to be Imployed in the ſeveral parts of their Dioceſes. But the Patrons never had the Abſolute Diſpoſal of their Benefices upon their own Terms; but if they did not preſent Fit Perſons within the limited time, the Care of the Places did return to the Biſhop, who was then bound to provide for them. Some pretend, *That before the* Lateran *Council, there was no time of Lapſe to the Biſhop, if the Patron did not Preſent: but that the Biſhop was to provide one to ſerve the Cure in the mean time, and the Patron might preſent when he would.* But this is certainly a Miſtake: however it be aſ-

2. Inſt. 361.

ſerted

ferted by Persons of great Authority. My Lord *Coke* cites *Bracton* and *Fleta* for it: but I can find nothing like it in either of them. *Bracton* indeed speaks of the time of Lapse by the *Council of Lateran*, which was to be *after six Months*, if a Dispute happen'd about the Title; and this Constitution is extant in the *Decretals*: and the same Words are used by *Fleta*: but not a Word in either of them of any *unlimited Power which Patrons had before*, as far as I can find. Which made me wonder at such a *Maxim*, as I find by several father'd on *Bracton*, *Ante Concilium Lateranense nullum currebat tempus contra Præsentantes.* But *Rolls* very fairly reports it just as it is in *Bracton*; yet afterwards he recites Mr. *Selden's* words. Before this *Lateran Council*, *Alex.* had sent a Constitution hither, which allow'd the Bishops,

Bract. l. 4. 341.

Ext. de Jure Patron. c. 22.

Fleta l. 5. c. 14.

Selden *of Tythes*, c. 12. 389.

Abridgment 2. 354.

Ext. de Officio Jud. Ordin. c. 4.

in caſe any Difference happened about the Patronage, to ſequeſter the Profits, without fixing the Time: which is all the Foundation I can meet with for this famous *Maxim.* But before this we may obſerve ſeveral Canons of Councils, which limited the Patrons to *three Months.* Theſe Canons were never receiv'd in *England*; which, if I miſtake not, had always the privilege of *ſix Months* for *Patrons.* This I ground upon the *Regiſter*, a Book of great Authority, and conſiderable Antiquity; where it is ſaid expreſly, *That the Biſhops have not the Right of Lapſe till ſix Months are paſſed*; which is ſaid to be *Secundum legem & Conſuetudinem Regni Angliæ*; *according to the ancient Cuſtom and Law of* England. And the like was obſerved in the old Cuſtoms of *Normandy.*

Eugen. 2. in Synod. Rom. c. 24.

Leo 4. in Synod. Rom. c. 25. ed. Holſt.

Regiſtr. f. 42.

Cuſt. Norm. Art. 69.

But

But by the Ancient Law of *England*, notwithſtanding the *Right* of *Patronage*, the Biſhop of the *Dioceſe* had theſe Rights reſerved to him:

1. The Right of *Admiſſion* of the Perſon preſented:
2. The Right of *Lapſe*, or beſtowing the Benefice, if the Patron failed his ſix Months:
3. The Right of making an *Avoidance*, by *Deprivation* or *Reſignation*.

1. The Biſhop hath by the Law the *Right of Admiſſion* of the Perſon preſented by the *Patron*. For here from the time of Chriſtianity being receiv'd among the *Saxons*, at leaſt as far as we can trace any Footſteps of the Settlement of a *Parochial Clergy*, it was expreſly provided for; *That no Presbyters ſhould be fixed in*

any Places, without the Conſent of the Biſhop. For this we have a Canon of *Theodore* Archbiſhop of *Canterbury*, preſerved by *Egbert* Archbiſhop of *York* (each the Seventh in their Sees, but at ſome diſtance of time) in his Collection of *Canons*: the words are, *Statutum eſt ut ſine Authoritate & Conſenſu Epiſcoporum, Presbyteri in quibuſlibet Eccleſiis non conſtituantur, nec inde expellantur; & ſiquis hoc facere tentaverit, Synodali Sententiâ feriatur.* So that by the Original Conſtitution of this Church the Biſhops had the Power of Fixing Presbyters in Churches, and of Removing them if there were occaſion; and no other Perſons could do it without them. This doth by no means infringe the Right of Nomination or Preſentation of Fit Perſons to the Biſhop: but it implies that no ſuch Preſentation was ſufficient, unleſs

Spelm. Concil.

unleſs the Biſhop did firſt Approve and Conſent to the Perſon. Wherein the Ancient Right of Patronage here in *England* did conſiſt, we cannot have a better Account; than from the Words of all the Nobility of *England* in their Remonſtrance to *Gregory* IX. when he attempted to incroach upon them by Papal Proviſions: *Cum igitur à primâ Chriſtianitatis Fundatione in Angliâ, tali fuerint hactenus progenitores noſtri gaviſi libertate, quod decedentibus Eccleſiarum Rectoribus, Eccleſiarum Patroni Perſonas idoneas eligentes ad eaſdem, Dioceſanis præſentaverunt ab eiſdem Eccleſiarum Regimini præficiendas.* Theſe are words of great Weight; and do plainly ſhew, that the Right of Patronage conſiſted in the Nomination of Fit Perſons to the Biſhop of the Dioceſe for any vacant Places: but that the Biſhops were, if they

Matt. Paris. A.D. 1239. p. 513.

approved them, to put them into the Poſſeſſion of them. In the time of *Innocent* III. the King wrote to the Pope; *that the Nobility and Biſhops of* England *did inſiſt upon it, as their Right by the Ancient Cuſtom, to build Churches on their own Lands: and the Pope yielded it to the Laity, provided that they had the Conſent of the Biſhop of the Dioceſe; and that the Rights of former Churches were not prejudiced thereby.* But ſaith Mr. *Selden*, *they challenged it without Licence.* What to do? *To build Churches on their own Lands*: but not a word of putting-in any Incumbents by their own power without the Biſhop's Conſent and Approbation. Nay, it appears that they could not build Churches on their own Lands without the Biſhops Allowance. Mr. *Selden* would fain have it believed, *That the Right of Preſentation to the Biſhop of the Dioceſe*

nnocent E- iſt. l. 1.

elden *of* Tythes 361.

. 387.

ceſe came in by the Canon Law about A. D. 1200. But the Inſinuations of that kind, as they are frequent in his *Book of Tythes*, ſo they do ſhew his want of Skill or Ingenuity at that time, as much as any one part of it. But I need go no farther, than this Letter of the Nobility to the Pope; who were extremely jealous of their Rights of Patronage, and yet they challenged nothing thereby, but a Right of Nomination of a Fit Perſon to the Biſhop of the Dioceſe: not a word of Inveſtiture or Collation by the Patron; which Mr. *Selden* talks of. He doth not deny, *That after A. D.* 1200, *it was the undoubted Law of* England *for the Patrons to preſent to the Biſhops.* But I ſay, it was the Law of *England*, before ever the *Decretals* were made: it was the Original and Fundamental Law of the *Engliſh Church*; and 83. 86. 387.

as

as Ancient as the Right of *Patronage*. In the ſame Epiſtle, they deſire the Pope to leave them to their ancient Liberty, which was *Perſonas idoneas præſentare*. But who is to be Judge of the *Fitneſs of the Perſons*? For that, we have a full Declaration of the Ancient Law and Cuſtom of *England*, *in Artic. Cleri*, c. 13. *De Idoneitate Perſonæ præſentatæ ad Beneficium Eccleſiaſticum, pertinet Examinatio ad Judicem Eccleſiaſticum, & ita eſt hactenus uſitatum, & fiat in poſterum.* 2. Inſt. 632. Upon which my Lord *Coke* ſaith, *That the Examination of the Ability and Sufficiency of the Perſon belongs to the Biſhop, who is the Eccleſiaſtical Judge; and in this Examination he is a Judge and not a Miniſter; and may and ought to refuſe the Perſon preſented, if he be not Perſona idonea.* And that this was no new Law, appears by the words, *That it had been hitherto ſo uſed, and*

ſhould

ſhould be ſo for the time to come. And ſo *Coke* truly ſaith, that *this Act was but a Declaration of the Common Law and Cuſtom of the Realm.* So that the Biſhops Power of *Examining and Judging the Fitneſs of the Perſon preſented* is a part of the *Common Law of* England.

15 *H.* 7. 8. It is declared by all the Judges, *That the Biſhop in the Examination of a Clerk, is a Judge and not a Miniſter. And if he misbehaves himſelf, he is to be puniſhed as a Judge.*

18 *H.* 7. *Keilway* ſaith, *That the Biſhop may refuſe for Inſufficiency; and is to give notice to the Patron.*

It was Reſolved by the Court in *Specot's* Caſe, *That the Court is to give Credit to the Biſhop acting Judicially*: but then it is ſaid, *That the Plea muſt be ſpecial and certain.* 5 R. 57.

And ſo *Coke* ſaith, that in a *Quare Impedit* brought againſt the Biſhop for

for Refuſal of his Clerk, *he muſt ſhew the Cauſe of his Refuſal ſpecially and directly.*

But it was the Opinion of Lord Chief Juſtice *Anderſon*, *That in things not Triable at Common Law a General Plea was ſufficient.* But when the Caſe came to the King's Bench 32 *Eliz.* it was there ſaid, That the *Articuli Cleri* mention a *Reaſonable Cauſe*; which, ſay they, muſt be Special: for *Cauſa vaga & incerta non eſt rationabilis.* But the main point is, Who is to judge what is a *Reaſonable Cauſe?* and I cannot but think that *Anderſon*'s Opinion is the trueſt and moſt Reaſonable. If it be for a matter Triable at Common Law, that Court is to judge: but if not, I do not ſee how it can be avoided, but the Biſhop muſt judge: and his Judgment of *Inſufficiency* muſt be taken; as well as in any Certificate

Anderſ. 190. Leon. 3. 209.

Certificate whatſoever. For, if the Law truſt him with the Judgment of a Matter proper for him to judge of; other Courts, which have no Cognizance of it, muſt give credit to ſuch a Certificate: or elſe they muſt take upon them to judge in Matters that are not of their Cogniſance; which is to confound the Juriſdiction of Courts. I grant, the Judgment of the Biſhop is not Concluſive: but the Appeal then lies to the Supreme Eccleſiaſtical Court; and the *Metropolitan* is to be Judge of the Sufficiency of the Perſon.

" But is not this a great Preju-
" dice to the Right of Patrons, if
" the Biſhops are to judge of the
" Fitneſs of Perſons preſented; and
" ſo the Patrons Preſentation may
" ſignify nothing, if the Biſhop
" pleaſes?

This

This is a Truſt which the Law repoſes in the Biſhop, and it lies upon his Conſcience to act ſincerely in this matter: and in caſe of *Examination of Fit Perſons*, a Truſt muſt be placed ſomewhere: and in whom more properly than in the Biſhop of the Dioceſe? to whom the Care of it doth eſpecially belong; and that by as plain Law as any we have. Are not all Judges truſted in Matters that come before them? But this is no Deciſive Judgment: for an Appeal lies according to the Nature of the Matter. And this is no other Truſt than hath been allow'd in all other Chriſtian Nations, where the Rights of Patronage are owned. *Juſtinian* owns it ſeveral times in his *Novels*; not only that the Biſhops are to Examine and Approve thoſe who are nominated by Founders of Churches; but *if they find them unworthy,*

Novel. 53. tit. 12. c. 2. 23. c. 18.

worthy, they may put others in their room. By the *Capitulars*, or old Ecclesiaſtical Laws of *France*, the Lay Patrons are not only to preſent to the Biſhop ſuch as were *Probabilis Vitæ & Doctrinæ*; but if upon Examination they found them otherwiſe, it was in their power to reject them. As to the Canon Law, there can be no Diſpute in this Point: but if the Biſhop refuſed, an Appeal did lie to the Pope; and if he were unjuſtly refuſed, the Biſhop was bound to provide for him: but during the Appeal, the Patron might preſent another; whom if the Biſhop approved, the Appeal did fall. *Rebuffus* a noted Lawyer ſaith, *That it is a damning Sin in a Biſhop, not to Examine the Fitneſs of thoſe who are preſented by Patrons.* And a late learned French Canoniſt ſaith, *Thoſe are to blame who lay the Fault of ſo many*

Cap. Li. c. 84. l. 5. 98. Addit. 4. 95.

Ext. de Jure Patr. c. 29.

Rebuff. de Nomin. n. 10.

many unworthy Men being in Places on the Lay Patrons: for, ſaith he, *the Biſhops are to blame, who are bound to Examine, and if they ſee Cauſe, to reject them.* So that we have not only our own Law, but the General Conſent of the Chriſtian World, where the *Right of Patronage* is allow'd; as to the Biſhops Right of *Examining* and *Judging the Fitneſs* of Perſons preſented to Benefices.

Fra. de Roye de Jure Patron. Proleg. c. 25.

2. The *Right* of *Collation* upon *Lapſe* belongs to the Biſhop, notwithſtanding the *Right* of *Patronage*. It is ſaid by Lord *Hobart*, *That a Lapſe is not an Intereſt naturally, but a meer Truſt in Law*; and afterwards, *That the Ordinary, or he that is to preſent by Lapſe, is as a kind of Attourney made by Law, to do that for the Patron, which it is ſuppoſed he would do himſelf, if there were not ſome lett: and therefore the Collation by Lapſe is in the*

Hob. 154.

Right

Right of the Patron and for his Turn. This ſeems to me to be a miſtaken Notion of a *Lapſe*: for the true Queſtion is, Whether upon a *Lapſe* the Ordinary doth collate *Jure pleno*, or *Jure devoluto*? Some French Lawyers held the latter; but *Car.* *Molinæus* and others utterly reject that Opinion, for this Reaſon; Becauſe *Churches* and *Dioceſes* were *Jure communi* under the Care of the Biſhops; but it was by *particular Indulgence*, that the *Patrons* had the Right of Preſentation: which being neglected, things do return to *Common Right*: and therefore the Biſhop hath a true Intereſt, and acts not in the Right of the Patron, but his Own.

De Roye de Jure Patr. p. 95. 145.

It's true, there is a *Devolution* afterwards by our Law: for as the Author of the *Doctor and Student* ſaith, *The Law of the Realm is, that if a Benefice falls void, then the Patron*

Dr. & Stud. c. 36. 125.

ſhall preſent within ſix Months; and if he do not, that then the Ordinary ſhall preſent: but yet the Law is farther in this Caſe, that if the Patron preſent before the Ordinary put-in his Clerk, that then the Patron ſhall enjoy his Preſentment: and ſo it is, though the time ſhould fall to the Metropolitan. For, as he ſaith, *by our Law, if the Biſhop doth not collate within ſix Months, then the Metropolitan preſents.* But this is by a Right of *Devolution*, and then why not the other?

The Anſwer is, That the Biſhop is *Ordinary* of the *Dioceſe*, and therefore it comes to him of *Common Right*: but it falls to the Archbiſhop, not as *Ordinary*, but as *Superiour*; to whom the *Right of Devolution* falls upon the *Inferiour's* Neglect. For, although in ſome reſpects, and in the Excepted Caſes, the *Archbiſhop* may be ſaid to be *Ordinary of the*

the whole Province: yet that is not ſo much in reſpect of *Immediate Juriſdiction*; which *Hobart* and others ſay, was *by virtue of the Legatine Power which was annexed to his See.* But the Archbiſhop hath a Power as *Metropolitan*, to ſupply the Defects of the *Suffragans* of his Province; and ſo this *Right* of *collating* upon defect of the *Ordinary* comes to him by *Right of Devolution.* Hob. 17. Brownl. 21. 27.

But how then comes the King to his Right after the Metropolitan's Neglect? That is, ſay our Lawyers, *Becauſe the King is Patron Paramount of all the Benefices within the Realm.* The meaning is, That the King by Right of his Crown is to ſee that all Places be duely ſupplied with Perſons fit for them: and if all others whom the Law hath entruſted, do neglect their Duties; then by the natural Order and Courſe of Go- Dr. & Stud. 124. Plowd. Com. 498. b.

vernment, it falls to the Supreme Power, which is to ſupply Defects, and to reform Abuſes.

3. The Biſhop hath the Right of making an Avoidance by Deprivation or Reſignation. For, as he hath the Power of putting-in; ſo the Law hath lodged in him the Judicial Power of proceeding againſt Offenders, and hath not left that to the Judgment of the Patron. If we enquire, Who by our Law is made the proper Judge of a Beneficed Perſon, whether he behaves himſelf ſo as to deſerve to loſe his Benefice? Will any one ſay, that the Law hath put this into the Patron's hands? Yet all thoſe who juſtify theſe Bonds of Reſignation muſt in Effect ſay, that the Patrons are the proper Judges: for they have the real Power of Deprivation in their Hands, and may execute it when they pleaſe.

Which

Which is ſuch an Arbitrary Juriſdiction, as would be thought intolerable in other Hands.

In all Cauſes of *Deprivation* of a Perſon actually poſſeſſed of a Benefice, theſe things muſt concur:

1. A Monition or Citation of the Party to Appear:
2. A Charge given him, to which he is to Anſwer, called the *Libel*:
3. A Competent Time aſſigned for the Proofs and Anſwers:
4. A Liberty for Counſel to defend his Cauſe; and to except againſt the Proofs and Witneſſes:
5. A Solemn Sentence after hearing all the Proofs and Anſwers.

Theſe are the Fundamentals of all Judicial Proceedings in the *Eccleſiaſtical Courts*, in order to a *Deprivation*: and if theſe things be not

obſerved, the Party hath juſt cauſe of Appeal, and may have Remedy by a Superiour Court. And theſe Proceedings are agreeable to the Common Juſtice and Reaſon of Mankind: becauſe the Party accuſed hath the liberty of Defence, and the Right of Appeal. But there is nothing of all this, in Bonds of Reſignation: for the Patron takes the Advantage of the Forfeiture of the Bond; and ſo without any Trial, or Proof, or Sentence, deprives him of his Benefice.

Some who are no Friends to the Eccleſiaſtical Courts, would have *no Deprivation of a Benefice, but by Proceedings at Common Law: becauſe it is a Freehold.* Suppoſe that it were ſo (which ſeems contrary to the courſe of the Law: for the Biſhop in a Plea to a *Quare Impedit*, ſaith, *Nihil clamat præter Inſtitutionem & Deſti-*

Deſtitutionem Clericorum; and *Eccleſiaſtical Deprivations* have been ſtill allow'd at Common Law, if they have been according to the Eccleſiaſtical Laws) but taking it for granted, that a Deprivation of a *Freehold* ought to be at Common Law: what then? what, without an Indictment, and without a Trial by a Jury? No Hearing of the Cauſe, no Witneſſes examin'd, no Counſel to be heard, no Judgment by his Peers? And can this be agreeable to the Fundamental Laws of *England*; to have Men forced out of their *Freeholds* in ſuch an Arbitrary manner? What would they think; if other *Freehold Eſtates*, which hold of a Superiour Lord, were made ſo Arbitrary, as to Depend upon the Will of the Lord ſo, as to be turned out upon ſix Months notice? Let us ſee *Bonds* of *Reſignation* practiſed

upon ſuch Eſtates: and then we ſhall ſoon find, what Clamours will be made againſt them, as overthrowing the Fundamental Rights and Liberties of the People. Is there not the ſame Reaſon in this Caſe? Is there not greater? becauſe theſe Benefices are not Freeholds, which are held of the Patrons; but they have only a Right to Preſent Fit perſons to them. But it may be, that the Defenders of theſe Bonds will deny Benefices to be *Freeholds* by the Law of *England*. It is eaſy to gueſs, what ſome Men would have them to be, by theſe *Bonds*: I am ſure far enough from *Freeholds*. But ſuch private Tranſactions cannot alter the Nature of things: and we are now enquiring, What Benefices are, by the Law of *England*? It is diſputed at Common Law, In whom the Freehold of the Glebe-

Glebeland of a Benefice is, during the Voidance? And it is agreed, that it is neither in the Patron nor Ordinary: becauſe it was given to the Incumbents and their Succeſſors. And therefore they tell us, it is then *in Abeyance*; which is a pretty way of expreſſing, That the Law takes care that it ſhall come to the next Incumbent, notwithſtanding the Diſcontinuance by Death of his Predeceſſor: and I think it had been as well ſaid, that it was in the Law, although not in any Perſon. But it is not diſputed, but that as ſoon as another Incumbent is in Poſſeſſion, the *Freehold* is in Him: for thoſe are *Littleton's* words, Sect. 647. And my Lord *Coke* ſaith, *That the Incumbent cannot be look'd on, as a meer Tenant for Life: becauſe he may have ſuch Writs, which none can have but a Tenant in Fee-ſimple or Fee-tail; and he may* 1. Inſt. 342.

may receive homage, which Tenant for Life cannot do. And for this he goes as far back as the time of *E.* 1. But long before that, in *Glanvil*'s time, which was of *H.* 2. it is ſaid, *That he that is poſſeſſed of a Benefice by Inſtitution from the Biſhop, and judged fit by Him, ſhall enjoy it for his Life; although the Right of Advowſon be diſputed.* Which is ſeveral times affirmed by my Lord *Coke* upon good Reaſon. In one place he ſaith, *That at the Common Law, if a Church be once full, the Incumbent could not be removed*: (excepting Juſt Cauſe of Deprivation) *and Plenarty generally was a good Plea in a* Quare Impedit, *or Aſſiſe of* Darein Preſentment: *and the Reaſon of this was, to the Intent the Incumbent might apply himſelf to his Spiritual Charge.* 2. *The Law intended, that the Biſhop that had Cure of Souls within his Dioceſe would*

Glanvil l. 13. c. 20.

2. Inſt. 343. b.

would admit and inſtitute an able Man for the Diſcharge of his Duty and his own; and that the Biſhop would do right to every Patron in his Dioceſe. In another place he ſaith, *That by the order of Common Law, if one had preſented unto a Church whereto he had no Right, and the Biſhop had admitted and inſtituted his Clerk, this Incumbent could not be removed for divers Reaſons:* 1. *For that he came into the Church by a Judicial Act of the Biſhop.* 2. *That by the Common Law, in every Town and Pariſh there ought to be* Perſona idonea: *and when the Biſhop had admitted him able, which implied that he was* idonea Perſona, *then the Law had his final Intention,* viz. *that the Church ſhould be ſufficiently provided for.* 3. *That the Incumbent having* Curam animarum *might the more effectually and peaceably intend ſo great Charge;* 2. Inſt. 357.

the

the Common Law provided, that after Inſtitution he ſhould not be ſubject to any Action, to be removed at the Suit of any common Perſon; without all Reſpect of Age, Coverture, Impriſonment, or Non-ſane-memory; *and without regard of Title, either by Deſcent or Purchaſe, or of any Eſtate.* Are theſe things conſiſtent with *Bonds of Reſignation?*

But it may be ſaid, *That here is no Deprivation ſuppoſed, but a voluntary Reſignation: and what hurt is there, if it be a Man's own Act?*

I anſwer, that we are not only to conſider the Act of the Perſon, but the Intereſt and general Concernment of the Church in it. For in all matters of ſuch a Publick nature, we are not to regard ſo much the Conſent of the Party, as the Nature and Conſequence of the Act it ſelf. If it be an illegal thing, and

tend

tend to ſubvert the Rights of the Church; it cannot make it legal to ſay, that it was his own Act. Now as to this kind of Reſignation, we are to conſider theſe two things:

1. That if the Reſignation be not into the hands of the Biſhop, it is an illegal Act, and void of it ſelf:
2. That if it be into the Biſhop's hands, he hath the Power in Law to Accept it or not.

1. That the Reſignation muſt be into the hands of the Biſhop. For a Reſignation into the hands of the Patron, is by the *Canon Law* declared to be null and void of it ſelf. So *Innocent* IV. *ad c. 6. de rerum per.* And this is grounded on the Text of the *Canon Law.* C. 17. Q. 2. c. *Gonſaldus*: and on the Appendix to the *Lateran Council* under *Alex.*

v. Flamin. Pariſ. de Reſignat. l. 7. c. 1. n. 9.

Alex. III. *De Renunt. tit.* 15. *c. pen.* where it is declared *to be an unworthy thing, and contrary to the Canons, to Reſign into the hands of Patrons.* And *Alex.* III. forbids it abſolutely under an *Anathema, De Renunt. c.* 4. which is confirmed by *Innocent* III. *c.* 8. in the *Decretals.* But we are to conſider eſpecially, how far this part of the Canon Law was here receiv'd; and we can have no better a Judge in this Caſe than *Lyndwood*, who

Lyndw. f. 55. c. *Ne lepra.*

ſaith poſitively, that *Renuntiatio facta in manus Laici etiam ſponte non tenet*; i. e. a Reſignation made into the hands of a *Lay-Patron*, if it be never ſo free, doth not hold: and therefore he ſaith, it muſt be made into the hands of Him who hath the *Ordinary Juriſdiction*, and therefore hath power to Admit.

He obſerves two things very material as to the point of Reſignation:

1. That

1. That a Voluntary Reſignation, though not to the *Ordinary*, deprives the Party of the Poſſeſſion; ſo as he cannot recover, although he be not wholly deveſted of the Property, or Right to the thing: *Quia ſine Conſenſu Superioris non tenet Reſignatio*: and this is founded on that Fundamental Reaſon, That the Care of the Dioceſe belongs to him, who hath the Ordinary Juriſdiction; who was the Biſhop: but as *Lyndwood* obſerves, *by Cuſtom and Compoſition*, this is put into other hands; as in Places of Exempt Juriſdiction. And ſo, where the Power of granting Inſtitution is lodged by the *Biſhop's Conſent*, and a *Preſcription* upon it; there is a Power likewiſe of Receiving a *Reſignation*: but not in any, who have only a Delegated Power from the Biſhop. For there is a Difference in Law and Reaſon between an

an *Ordinary Power* depending on an ancient *Preſcription* and *Compoſition* (as it is in ſeveral places in the *Deans* and *Chapters* within certain Precincts) and an *Ordinary Power* in a *Subſtitute*, as a *Chancellor* or *Vicar-General*. For although ſuch an Officer hath the ſame Court with the Biſhop, ſo that the Legal Acts of the Court are the Biſhop's Acts, by whoſe Authority he ſits there; ſo that no Appeal lies from the Biſhop's Officer to himſelf, but to the Superiour: and although a *Commiſſary* be allow'd to have the Power of the *Ordinary* in *Teſtamentary Cauſes*, which were not originally of *Spiritual Juriſdiction*, as it is ſaid in *Henſlow*'s Caſe, with which *Lindwood* agrees: yet in Acts of Spiritual and Voluntary *Juriſdiction* the Caſe is otherwiſe. For the Biſhop by Appointing a *Chancellor*, doth not deveſt himſelf of his own

Ordinary

6. de Appel. c. Roman. Lyndw. f. 54.

9 R. 41. De Teſtam. v. Stat. v. Approbat.

Ordinary Power: but he may delegate ſome parts of it by *Commiſſion* to others, which goes no farther than is expreſſed in it. For it is a very great Miſtake in any to think, that ſuch who act by a *Delegated Power*, can have any more Power than is given to them; where a *Special Commiſſion* is required for the Exerciſe of it. For by the *General Commiſſion* no other Authority paſſes, but that of *hearing Cauſes*: but all Acts of voluntary Juriſdiction require a *Special Commiſſion*, which the Biſhop may reſtrain as he ſees Cauſe. For as *Lyndwood* ſaith, *Nothing paſſes*, virtute Officii, *but the Hearing of Cauſes*: ſo that other Acts depend upon the Biſhop's particular Grant for that purpoſe. And the Law no-where determins the bounds of a *Chancellor's Power* as to ſuch Acts; nor can it be ſuppoſed ſo to do, ſince it is but a

6. De Officio Vicarii c. 2.

delegated Power: and it is in the Right of him that Deputes, to Circumſcribe and Limit it. Neither can *Uſe or Cuſtom* inlarge ſuch a Power, which depends upon another's Will. And however, by modern Practiſe, the Patents for ſuch Places have paſſed for the Life of the Perſon, to whom they were firſt granted; yet it was not ſo, by the ancient *Eccleſiaſtical Law of* England. For *Lyndwood* affirms, That a Grant of Juriſdiction ceaſes by the Death of him who gave it: *Per Mortem deputantis ceſſat Poteſtas Officialium*: (or elſe it could never paſs into the Dean and Chapter *ſede vacante*; or to the Guardian of the Spiritualties.) And he gives a good Reaſon for it; *Nè invitus habeat Officialem ſibi fortaſſis odioſum.* It's true, that by the Statute 37 *H.* 8. *c.* 17. meer Doctors of Law are made capable

De Sequeſtr. v. Officiales.

pable of Exerciſing *all manner of Eccleſiaſtical Juriſdiction.* But it doth not aſſign the Extent of their Juriſdiction; but leaves it to the Biſhops themſelves, from whom their Authority is derived. And the Law ſtill diſtinguiſhes between *Poteſtas Ordinaria* and *Delegata*: for the former ſuppoſes a Perſon to act in his own Right and not by Deputation; which, I ſuppoſe, no Chancellors or Officials will pretend to. But how far now, a Commiſſion to exerciſe Juriſdiction doth hold, when the Perſon who gave it is dead, is not my preſent buſineſs to enquire: but in *Sutton's* Caſe, it ſeems to be taken for granted by the Counſel, that a Chancellor's Patent, confirmed by Dean and Chapter, doth give a Man a Freehold for Life, if he be capable of doing his Duty; otherwiſe he may be deprived for Inſufficiency,

Bracton l. 5. c. 2. Fleta l. 6. c. 37. 1. Inſt. 96. Cowel. v. Ordin.

Cr. Car. 65.

ficiency, as Doctor *Sutton* was.

Noy 91. But *Noy* ſaith, *That the Court was in doubt, how far the Act of the Predeceſſor could bind the Succeſſor as to the Profits.* And in the Prebend of *Hatcherlies* Caſe,

152. *Dodderidge* declared, *That Eccleſiaſtical Juriſdiction in Judicial Acts may be executed by Subſtitute: but a Grant of it is not good, but during the Biſhop's Life; and ſhall not bind the Succeſſor.* And *Coke* thought it a very hard thing, *That the Succeſſor ſhould not remove him; but be bound to anſwer for the Acts and Offences of a Commiſſary, which he never put-in.* But theſe things belong not to our preſent buſineſs, any farther than to ſhew, that however in ſome Caſes the Biſhops may ſubſtitute others; yet as to *Reſignations* of *Benefices*, for all that I can find, the Law only takes notice of the *Biſhop* himſelf.

Lynd-

Lyndwood obſerves, that there is a difference to be made between the *Reſignation* of a *Simple Benefice*, i. e. where there is no Cure of Souls; and of ſuch a one that hath ſuch a Cure going along with it. In the former Caſe he ſaith, *That a Reſignation may be to the prejudice of the Party, without the Biſhop's Conſent*: but in the latter, where it may be *to the prejudice of Others* as well as of himſelf, it hath no force without the *Biſhop's Ratification*: *In hoc Caſu neceſſaria eſt Ratihabitio Epiſcopi.* So that no *Reſignation* of a *Cure of Souls* can be of any Validity without the *Biſhop's Acceptance.* In the Caſe of *Smith* againſt *Foanes*, it was reſolved and agreed by all upon Evidence at Bar, *That a Reſignation to a Proctor, does not make the Church void, until it be accepted by the Biſhop, and acknowledged before him.* Noy 157.

2. But ſuppoſe the *Reſignation* be made into the hands of the Biſhop, is he bound to *Accept* it? By what Law? For what Reaſon? Muſt he not enquire into the Reaſon and Inducements of the *Reſignation*, whether it be *Corrupt* or not? No *Biſhop* can be bound to accept a *Corrupt Reſignation*; and whether it be ſo or not, he is bound to enquire: and if he be not ſatisfied; by what Law can he be required to do that, which he cannot do with a good Conſcience? If the Law hath truſted him with accepting a *Reſignation*; it hath likewiſe truſted him with Judging, whether it be fit to be accepted or not. In *Gayton's* Caſe it is plain, *That the Biſhop may refuſe a Reſignation before a Publick Notary, when there was a Condition annexed to it, which the Law doth not annex.* For in this Caſe, the Condition was,

Owen 12.

That

That if ſuch or ſuch a Perſon were not preſented within ſix Months, the Reſignation ſhould be null: which *Coke* then ſaid, *made it void,* becauſe *Reſignations ought to be free:* and this is a Judicial Act, to which a Condition cannot be annexed, no more than an Ordinary may admit upon Condition.

But it may be objected, that in Caſe of *Donatives* the *Reſignation* muſt be into the Patrons hands, as in *Gays* and *Fairchild's* Caſe: why then may not a *Reſignation* be good to a Patron in other Benefices, ſince thoſe are as really *Benefices* as the other? Yelvert. 60 Mar. 765.

The difference is, that there is no *Preſentation* to the Biſhop in *Donatives.* For, it is agreed by the Judges in that Caſe, *That if there were a Preſentation once made to the Biſhop, it ceaſes to be a Donative, and becomes* Cr. 2. 63. 1. Inſt. 344

always Preſentable. So that the Caſe of *Donatives* is very different; for we ſay, that wherever the Biſhop hath a Right to admit, it is his Right to accept of a *Reſignation.* But in this Caſe, the Biſhop is ſuppoſed to have nothing to do in the *Admiſſion* or *Inſtitution* of the Perſon. If it be asked, *how the Biſhops came to loſe their Right of receiving the Preſentation to theſe Benefices?* I anſwer, that they ſeem to me to have come one of theſe two ways: 1. *By Royal Licence*: ſo my Lord *Coke* ſaith, *That the King may not only found a Church, or Free Chapel Donative himſelf; but may Licenſe any Subject to do the ſame,* But the *Regiſter* ſuppoſes a *Royal Foundation*, and not a meer *Royal Licence*; and that it muſt be proved to be *Ancient* too: and therefore a *New Licence* will not come up to the *Regiſter.* 2. *By Peculiar Privilege.*

1. Inſt. 344.

Regiſtr. 40. 3.

As

As when a Lord of a Manor in a great Pariſh, having his Tenants about him at a remote diſtance from the Pariſh-Church, offers to build and endow a Church there; provided that it ſhould belong entirely to him and his Family, to put in ſuch Perſons as they ſhould think fit, if they were in Holy Orders. It's very poſſible, that the Biſhops at that time, to encourage ſuch a Work, might permit them to enjoy this Liberty; which being continued *time out of mind*, is turned into a *Preſcription*. If theſe *Donatives* had been common, the Miſchief would have been more viſible: but being ſo few in Compariſon, they have been leſs taken notice of. And they are to be diſtinguiſhed from thoſe called *Sine-cures* and *Exempt Juriſdictions*.

For *Sine-cures* in Truth, are *Benefices Preſentable*; but by means of

Vica-

Vicarages endowed in the ſame places, the Perſons who enjoy them, have by long Cuſtom been excuſed from Reſidence; which is the moſt can be ſaid for them. And ſuch *Sine-cures*, if they be reſigned, it muſt be into the Biſhop's hands.

Exempt Juriſdictions are not ſo called, becauſe under No *Ordinary*; but becauſe they are not under the *Ordinary* of the *Dioceſe*, but have one of their own. Theſe are therefore called *Peculiars*; and they are of ſeveral ſorts:

1. *Royal Peculiars*: which are the *King's Free Chapels*, and are Exempt from any Juriſdiction but the King's; and therefore ſuch may be *Reſigned* into the King's hands as their proper *Ordinary*; either by *Ancient Privilege*, or *Inherent Right*. But how far *Reſignations* may be made to the King as *Supreme Ordinary*, as in

ynd. f. 64. 80
olls Abrid. 356.
oke 12. 41,
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Good-

Goodman's Caſe, it is not here a place to examine.

2. *Archbiſhops Peculiars*: which are not only in the Neighbour *Dioceſes*, but diſperſed up and down in remoter places: For it appears by *Eadmerus*, *That wherever the Archbiſhop had an Eſtate belonging to him, he had the ſole Juriſdiction as Ordinary.* Eadm. Hiſt. in Anſelm. p. 22.

3. *Deans and Chapters Peculiars*; which are Places wherein by *Ancient Compoſitions* the Biſhops have parted with their *Juriſdiction* as *Ordinaries*, to thoſe Societies; whoſe Right was not *Original*, but derived from the Biſhop; and where the *Compoſitions* are loſt, it depends upon *Preſcription*; as in the *Deans and Chapters* of St. *Pauls*, and *Litchfield*, which are mentioned in the Books, 11 *H.* 4. 9. Rolls Abrid. 2. 357.

4. *Peculiars* belonging to *Monaſteries*. For, the richer *Monaſteries* were very uneaſy, until they had obtained either

either from the *Biſhops*, or from the *Popes* (which proved the moſt effectual, but more chargeable way) an *Exemption* from Ordinary Juriſdiction. Thoſe *Churches*, which the *Monaſteries* had gotten to be annexed to themſelves, were called *Appropriations*: but how far theſe were Exempt from the *Ordinaries* Juriſdiction, is not fully underſtood; and therefore I ſhall endeavour to explain it.

1. *Appropriations* did not at firſt imply any *Exemption* from the *Ordinary*. For it was expreſly provided in the Canon Law, that no Perſons ſhould be put into ſuch Churches without *Inſtitution from the Biſhop*: to whom the *Incumbents* were to be anſwerable in all *Spiritual matters*; as in all *Temporal*, to the *Abbots*. And in the oldeſt *Appropriations*, which I have ſeen, there is a *Salvo per omnia Jure*

c. 16. Q. 2. c. ane.

Jure Epiſcopali: which words are inconſiſtent with an *Exemption*.

2. The Forms of *Appropriation* were different afterwards. For although none could be made without the Biſhop's Conſent, yet that Conſent was expreſſed in different ways, and had different Effects.

If the Biſhop only confirmed the Lay-Patron's Gift, then nothing but the *Right of Patronage* paſſed, and his Juriſdiction remained. If the Biſhop joyned in the *Donation* in theſe words, *Concedimus vobis talem Eccleſiam*; then he paſſed away his *Temporal Rights*, as to that Church. If the Biſhop granted the Church *Pleno jure*; then the *Canoniſts* ſay, he paſſed his *Dioceſan Right*: which conſiſted in Rights which the Biſhop had diſtinct from his *Epiſcopal Juriſdiction*: which it was thought he could not part with by any Act of his;

Ext. de Donat. c. Paſtor.

Lyndw. f. 80

his; for that were to deveſt himſelf of his Order.

3. *Appropriations*, confirmed by the *Papal Authority*, were allow'd to carry with them *Exemptions* from the *Ordinary*. And therefore the *Monaſteries* which could bear the charge, did not think themſelves free from their *Ordinaries*, till they had obtained *Bulls* for that purpoſe: and then they took themſelves to be free in their *Conventual Churches*, as well as their *Chapels*, or *Oratories* on their own Lands.

4. All *Papal Exemptions* are taken away by Act of Parliament, 31 *H.*8. *c.* 13. and the *Churches* ſo exempted are put under *the Juriſdiction of the Ordinary of the Dioceſe; or ſuch Commiſſioners as the King ſhall appoint.* So that no *Papal Exemption* can now be pleaded, as to *Appropriated Churches*; how clear and full ſoever the Char-

Charters of *Exemption* were. This is a thing ſo little taken notice of, that I ſhall ſet down the words, Sect. 23. *Be it further enacted, that ſuch of the ſaid Monaſteries &c. and all Churches and Chapels, to them, or any of them belonging; which before the Diſſolution &c. were exempted from the Viſitation or Viſitations, and all other Juriſdiction of the Ordinary or Ordinaries, within whoſe Dioceſe they were ſituate or ſet, ſhall from thenceforth be within the Juriſdiction and Viſitation of the Ordinary or Ordinaries, within whoſe Dioceſe they or any of them be ſituate and ſet; or within the Viſitation and Juriſdiction of ſuch Perſon or Perſons, as by the King's Highneſs ſhall be limited or appointed; this Act, or any other Exemption, Liberty or Juriſdiction, to the contrary notwithſtanding.*

There-

Therefore no Perſons who enjoy the Eſtates belonging to *Monaſteries*, can now plead an *Exemption* by virtue thereof from the *Ordinaries Juriſdiction*; nor that they have a Power to put-in and put-out as they pleaſe, without any regard to the Biſhop's Authority.

But ſuppoſe there were no Endowment, and that the Churches were built on the Site of the *Monaſteries*, and ſo were ſupplied by their own Body; then ſuch Perſons are wholly at their Will, and they may turn them out as they pleaſe. I anſwer;

I confeſs the Condition of ſuch Stipendiaries, is as bad as of thoſe who hold their Benefices under *Bonds of Reſignation*. For Tenures at the Will of the Lord are the worſt of any. But it is to be hoped, that ſuch Perſons who enjoy ſuch Eſtates as were originally

originally deſigned for the ſupport of the *Parochial Clergy*, (however at firſt fraudulently perverted by the Combination of the *Monks* and *Popes*) will at the leaſt take Care that the Cure of Souls be duely provided for in ſuch Places. For that Burthen goes along with the Churches Revenue in whoſe hands ſoever it be: and ſo they are both in Law and Conſcience to ſee the Places well ſupplied. And by the Statutes of Diſſolution, as they do enjoy the Rights, ſo they are bound to provide for the Churches: and where they were *Parochial*, to ſee that there were a fixed Incumbent with a competent Maintenance; which the Law always took a particular Care of.

II. It is time now to conſider the *Precedents*, which have been produced to ſhew, that theſe *Bonds of*

Reſignation are not againſt Law.

The firſt is of *Jones* and *Laurence*, 8 *Jac.* A Bond was given to reſign the Benefice he was preſented to, within three Months upon Requeſt: and it was alledged in Court, that it was a *Simoniacal Contract, and againſt Law.* On the other ſide it was ſaid, *That there doth not appear any Simony upon the Condition: and therefore Judgment was given for the Bond.* But a Writ of Error was brought in the *Exchequer Chamber*: and the principal Error inſiſted on was, *That this Condition was againſt Law.* But the Judges of the *Common Bench and Barons of the Exchequer* held, *That the Obligation and Condition are good enough. For a Man may bind himſelf to reſign upon good and valuable Reaſons, without any Colour of Simony: as to be obliged to reſign, in Caſe of Plurality or Non-Reſidence; or if his Son be*

Cr. 2. 248.

be at Age. But if it had been for a Leaſe of the Glebe, or Tythes, or a Summ of Money; That had been Simony &c. and ſo the Judgment was affirmed.

To this Precedent, I anſwer, That the Reaſon of the Judges is inſufficient. For it comes to this: the Bond is good becauſe there may be good Reaſon for it. May it not be ſaid on the other ſide, The Bond is naught, becauſe there may be a very bad Reaſon for it? And a Bond that may be turned to ſo very ill Uſes, it cannot but ſeem ſtrange to me, that the Judges ſhould affirm it to be a good Bond. If the particular Reaſons had been made the Conditions of the Bond, they might have judged upon them: but the Bond was general, and no Condition in it but Notice. Therefore their Judgment muſt be, that a Bond

is reaſonable, if no bad Condition appears in it: which makes the Incumbent a Slave to the Patron, and overthrows the juſt Rights and Liberties of the Clergy; and lays them open to Perjury, when they give ſuch a Bond meerly to obtain a Preſentation. And they very well knew that none could be poſſeſſed of a Benefice without an Oath againſt all *Simoniacal Contracts, either directly or indirectly.* Why did not the Judges declare, that it was *Simony* within their Oath? *But they were onely to judge of the Law.* And how could they judge this not to be a *Simoniacal* Bargain? *Becauſe there was no Simoniacal Condition in it.* But what is a *Simoniacal Condition?* Where hath the Common Law determin'd it? And by what Rule? Yes, ſay they, *A Leaſe for Tythes, or a Bargain for Money, had been Simony.* But how come

come they to determine that no other Contracts are *Simoniacal*; when they own, *That Simony is not under their Cogniſance?* Did they ever offer to adviſe with the *Civilians*, What was a *Simoniacal Contract*, according to the Eccleſiaſtical Law? Not the leaſt mention of this: and therefore I cannot but think this a Judgment without ſufficient Reaſon to ſupport it.

The ſame Cauſe came on again the next Year: and there it is declared, *That it was not Simony, but good Policy to tie him to reſign; and if it were, it is not material.* Here are two good Points declared: 1. *That Bonds of Reſignation are good Policy.* To what End? To inſnare Mens Conſciences; to make the Church a Prey to corrupt Patrons; to keep Men from doing their Duties, leſt they ſhould diſpleaſe their Patrons. Cr. 2. 274.

If this be *good Policy*, let it rather paſs for that, than for *good Law*. 2. *That it is not material as to the Goodneſs of the Bond, whether it be Simony or not.* Then it ſeems a *Simoniacal* Contract holds good in Law: which I think was no *good Policy* for Judges to declare.

But we are told, That 15 *Jac.* in the Caſe of *Paſchal* and *Clerk*, it was ſaid by the Court upon Evi- oy 22. dence, *That if the Patron takes a Bond of Reſignation at three Months warning, it was Simony within the Statute.* And for this we are referr'd to the *Roll*, 2051. I wonder this Judgment is not hitherto diſproved, *if the Roll be falſified*: and if not, here is Judgment againſt Judgment.

. Car. 180. utton 110. nes 220. ble 2. 446. But again, in the Caſe of *Babington* and *Wood*, it was reſolved on the ſame Grounds with that of *Jones* and *Laurence*, and ſo deſerves no new Conſideration: and ſeveral other Judgments

Judgments are ſaid to have been given ſince on the ſame Grounds.

But let us compare this Caſe with ſuch as have been adjudged to be *Simony* in the Courts of Common Law.

In the Caſe of *Byrte* and *Manning*, *The Court held, that if a Man entred into a Contract to procure a Preſentation in Conſideration of the Marriage of his Son, that had been a Simoniacal Contract.* Why is not a *Bond of Reſignation*, as much *Simony*, as a Conſideration of Marriage; when both are made equally the Conditions of obtaining a Preſentation? Cr. Car. 42.

If a *Simoniacal Contract be made, and the Perſon preſented not at all privy to it, he is to incurr the Penalty of it*: but if a Man be *Privy* to a *Bond of Reſignation* in order to a Preſentation, he ſhall not be guilty. And yet in the one Caſe, a Man ſwears with a good Conſcience: which Cr. Eliz. 789. C. 12. 100. Cr. 2. 385. Noy 25. Bulſtrod. 3. 90.

I think he cannot in the other.

In the Caſe of *Winchcomb* and *Pul-*
Hob. 165. *leſton*, it was declared to be *Simony, to purchaſe the next Preſentation, when the Incumbent was ſtill alive, but in a Fit of the Strangury.* And yet this was not within the Letter of the Law: for the Living was not actually void. Therefore ſuch Acts, as are againſt the Deſign and Reaſon of the Law, are forbidden by it. And the like
Wynch 63. was affirmed by *Juſtice Hutton* in the Caſe of *Sheldon* and *Bret.* In a late Judgment in Chancery, *Bonds of Reſignation* at Pleaſure to Patrons
Rep. Chancery 2. 399. by their Clerks, are *damned in Equity, when any ill uſe is made of them.* But why ſhould any ſuch *Bonds be allowed in Law*, which are liable to ſuch ill Uſes?

I conclude with the Words of
1. Inſt. 17. b. my *Lord Coke*, *That the Common Law doth deteſt Simony, and all corrupt Bargains*

Bargains for Preſentation to any Benefice: and its deſign is, that a fit Perſon for the Diſcharge of the Cure ſhould be preſented freely without Expectation of any thing. How then can *Bonds of Reſignation* be agreeable to Law?

Having thus diſpatched the main Point againſt all *General Bonds*, which are made the Conditions of obtaining a Preſentation; there remain only ſome Quære's to be reſolved.

(1.) Suppoſe a *Bond be required onely to tie Men up to do their Duties, and to keep them from Non-Reſidence.* I anſwer, (1.) That the Patron is to blame to pitch upon a Perſon to diſcharge ſuch a Cure, of whom at the ſame time he diſcovers ſuch a miſtruſt, as to need a Bond to make him do his Duty. And if a Man makes no Conſcience of his Duty without a Bond, I doubt he will

will make very little with it. If he could make him a good Man by his Bond, it were of great Uſe; but if he be not, he may do the more Miſchief by continuing in his Place by the Force of a Bond. So that I look on ſuch Bonds, as apt to raiſe Scruples in good Mens Minds; and to do no good upon bad ones.

2. That all wiſe and good Patrons will conſider the general Miſchief, more than a particular Inconvenience. And what greater Miſchief can come to our Church, than to have Bonds of Reſignation brought into Requeſt? For, beſides *corrupt Patrons as to Bargains*; what Advantage will *corrupt Patrons as to Religion* make of it? who by that Means will be able to turn out the Incumbents upon Notice given, when Opportunity ſerves them: as is before obſerv'd in the Preface.

Suppoſe

(2.) Suppoſe *it be a very equitable Caſe, as for a Minor; is a Bond of Reſignation unlawfull?*

I anſwer, That there may be a *Lawfull Truſt*, in ſuch a Caſe I do not queſtion: but whether the Perſon who takes this *Truſt*, can enter into a Bond, and take the Oath, I very much queſtion, upon the Reaſons already mention'd. For there may be a *confidential Simony*, as the *Caſuiſts* call it: and the way to prevent it, is, ſay they, That the Truſt be *ſine pretii, pacti, modi, vel conditionis interventu.* For the taking of a Bond argues a *Miſtruſt*; and is therefore contrary to the Nature of a *Truſt*. Navarr. Man. c. 23. n. 109.

(3.) Suppoſe *the Biſhop himſelf requires a Bond of Reſignation, as to a Prebend of his Church, if the Prebendary quit the Dioceſe; is ſuch a Bond juſtifiable, or not?*

The Biſhop, is no doubt, bound

to

to take all poſſible care of the Good of his Dioceſe, and to make his Preferments ſerviceable to that End. But if a Man knows before-hand, that without this Condition he cannot obtain it, and with it he may, he runs into a Snare by giving a Bond for that End; and after, taking the Oath againſt any *Simoniacal Contract, directly or indirectly.* I do think theſe Bonds of ſo bad a Nature and Tendency, that I do wiſh, that no Countenance or Incouragement be given to them: eſpecially by ſuch, whoſe Example may encourage others, to do that for Bad Deſigns, which they do for Good. And Wiſe and Good Men will always ſhew the greateſt Regard to that, which ſerves the moſt Publick Intereſt, and prevents the moſt growing Miſchief.

(4.) Sup-

(4.) Suppoſe *the Incumbent of a Living makes an Agreement with another Clergy man, that he ſhall have a Leaſe of his Benefice from three Years to three Years; upon which he takes a Summ of Money, and gives a Bond of Reſignation before Harveſt, and is to procure a Preſentation from the Patron: is this Simony or not, by our Law?*

Here the Patron is onely ſuppoſed barely to know and to conſent, (which is hardly to be ſuppoſed in ſuch kind of Caſes) and that the Terms are onely between the two Parties, (for I will not ſuppoſe the Biſhop acceſſary to ſuch Bargains) the Queſtion is, Whether the Incumbent can with a ſafe Conſcience part with his Benefice on ſuch Terms? and whether the other can give a valuable Conſideration for his Intereſt in it, if the Patron conſents?

I anſwer, That the Law is as expreſs againſt *corrupt Reſignations, as againſt corrupt Bargains for a Preſentation*; onely the Penalty is not ſo great. The Words of the Act are, *That if any Incumbent of any Benefice with Cure of Souls, ſhall corruptly reſign or exchange the ſame, or corruptly take for, or in reſpect of the Reſigning or Exchanging of the ſame directly or indirectly, any Penſion or Summ of Money or Benefit whatſoever; that then as well the Giver as the Taker &c. ſhall loſe double the Value of the Money ſo given, and double the Value of one years Profit.* 31 Eliz. c. 6.

It may poſſibly be ſaid, That this is a diſtinct Clauſe from the other, and hath another kind of Penalty; and ſo cannot reach Perſons in point of Conſcience as the other doth. But this is a ſtrange way of dealing with Laws. For there is the

the ſame Penalty in the former Clauſe; onely there is added a *preſent Avoidence*, and a *diſability in Law*: ſuppoſing theſe two left out, the one ſtands upon the ſame Foot with the other. And I would know, whether if theſe were gone, they could not as well make a Bargain for a Preſentation, as for ſuch a Reſignation? And is there nothing of Conſcience, or Honour, or a Regard to the Dignity of the Sacred Function in the Caſe? No Reverence to Laws made on purpoſe to deter Men from ſuch ſordid Practiſes? Is a Benefice to be look'd on as a meer Livelyhood, to be bought and ſold as other Eſtates are? Is there no Senſe of any Spiritual Imployment going along with it? No Regard to the Charge and Truſt that attends it? If nothing of a Spiritual Nature is to be conſider'd in a Benefice, then there

there can be no ſuch thing as *Simony*: and then their Hearts are at Eaſe, and they may publiſh Papers for *Preſentations*, as well as for *Reſignation* of *Incumbents*. But I will not ſuppoſe ſuch hard things of Perſons, who pretend to be in Holy Orders: but this I muſt put them in mind of; that there is an Oath to be taken, and a very ſtrict one, againſt all *Simoniacal Contracts, either directly or indirectly*. And is wilfull Perjury a thing to be ſlighted by any? eſpecially by Churchmen, and in order to a Cure of Souls? I have already mention'd my Lord *Coke's*
3. Inſt. 156. Saying, *That Simony is the more odious, becauſe it is ever accompanied with Perjury; for the Preſentee is ſworn to commit no Simony*: and for this he referrs to *Lyndwood*. And I have already ſhew'd, how *Simony* is to be underſtood according to him. If a

ſolemn

ſolemn Oath comes to be ſlighted and made little or nothing of; how can ſuch Men pretend to Religion or Conſcience? But it may be ſaid, *That Simony is to be determined by the Law; and the Law makes a Bargain with the Patron to be Simony, and not with the Incumbent.* I have ſaid enough already to ſhew, that the Statute doth not determine what *Simony* is, but only inflicts a ſevere Penalty on ſome ſorts of it; and therefore it may be *Simony*, although not expreſly againſt the Words of the Law. But the Words of the Law are expreſs againſt corrupt Reſignations: and I would fain know, whether a Reſignation for Money be not a Corrupt Reſignation? And ſuppoſing the Patron innocent, can any Man of common Senſe or Honeſty take the Oath, who comes in upon ſuch Terms, that *he hath made*

no Simoniacal Contract or Promiſe, to any Perſon or Perſons whatſoever, concerning the procuring or obtaining the Rectory or Vicarage &c. Is not this Bargain in order to the Procuring or Obtaining the preſentation? Let it be with whom it will, if it be for this End, it is *Simoniacal*; or elſe it will be hard to determine what *Simony* is. And as to ſuch kind of *Bonds* of *Reſignation* between Parties, without the Patron's privity; how can they ſignify any thing, if the Biſhop do not accept the Reſignation? which I have ſhewed before muſt be into his hands. But theſe Men ſeem to ſet the Biſhop quite aſide; or to ſuppoſe him very Weak and Inconſiderate. All they look at, is the Point of Law: And they may ſay, *They have advised with Council; and they have told them, that there is nothing againſt Law in this Practiſe.*

How?

How? not againſt Law? Did they ask them, whether this were not *a Corrupt Reſignation* within the Statute? *No*; *but whether it were Simony or not?* I hardly ſuppoſe any man that underſtands what *Simony* is by our Law, would go ſo far: but they might ſay, *it doth not void the Living, nor bring a diſability on the Perſon*; and ſo far they ſaid as the Statute doth. But is this all, which Men of Conſcience, and who take the Care of Souls, are to enquire after? What! nothing but whether *the Benefice will be void or not?* Or, *whether the King may Preſent or not?* Are theſe all the Conſiderations, even of Clergymen, in ſuch caſes? Such kind of Practiſes, which ſavour only of this world, are thoſe which give ſuch Advantages againſt our Profeſſion, in ſuch an Age of Infidelity as ours. Do not you ſee,

ſay they, that they mind nothing but their bare Intereſt as to this World, and have no regard to Law or Conſcience, where they contradict it? I am ſenſible, how unreaſonable it is, to charge a Profeſſion with the Faults of a Few; and thoſe in compariſon, I hope, not conſiderable in it. But we ought, if poſſible, to avoid any Scandal of this kind; for it ſtrikes at the whole Body of the Clergy of our Church, and at Religion it ſelf: which if we have any our ſelves, we ſhall be very tender of the Honour of. Some men have a mighty Prejudice againſt any Churchmen medling in Secular Affairs; although they be matters of Juſtice and Mercy, which the Law of the Land calls them to: but my great Prejudice is againſt ſuch Churchmen, who bring Secular ways of Trafficking into Church-matters;

matters; as though nothing were really minded, but *buying, and ſelling, and getting gain.* Advancing of Trade is a Noble Deſign in a Nation; and that which makes it conſiderable at Home and Abroad: but God forbid, that ſuch a way of Trading ſhould ever be brought into the Church, or be ſuffer'd to go unpuniſhed in it: for it will certainly Ruine the beſt Church in the World; by leſſening the Reputation of Churchmen; by taking off the good Affections of the People; and making them to run into Factions and Infidelity.

There is certainly ſomething more to be regarded in theſe things beſides our own Intereſt: there is that of Religion, of our Church, and of the Laws of the Land; which ought to overrule it. Suppoſe there were nothing but the bare Law in the

caſe, which expreſly forbids all Corrupt Reſignations; is it not fit for thoſe who are to Preach Obedience to Laws, to obſerve them, in what relates to themſelves? Ought they not to be Examples to others, in every thing of *good Report*? and to abſtain from whatever tends to take off from the Influence of their Doctrine upon the People? and nothing doth it more, than when they are ſuſpected to come among them by unlawful and indirect means.

I have taken the Liberty in this Diſcourſe, to ſpeak my Mind freely about Matters, which touch upon *Law* and *Conſcience*; the Duties of *Patrons* and *Incumbents*: but I have done it, without any other Deſign, than of doing ſome Good, or at leaſt preventing ſome Miſchief to the Church I live in, and which I have

have a true and a juſt value for. If I had not thought, that this kind of *Simoniacal Contracts* were a great and growing Miſchief; and had not had too much Reaſon to think ſo; I ſhould have ſpared my Pains, as others have done: for I do not love to be uneaſy to my ſelf or others. I know very well, how ill ſuch Diſcourſes are apt to be taken by all that are concerned in them; *viz.* *Patrons*, *Incumbents*, and all ſuch *Lawyers* that go about to defend them. But before I conclude this Diſcourſe, I muſt requeſt ſome things of all theſe: and then let them judge as they pleaſe; ſo it be without Prejudice and Partiality.

1. That Patrons would conſider, that the Right of Patronage is a Truſt committed to them; of which they muſt give an Account to God:

for there is an Obligation in Point of Conſcience, going along with it. It is hard to believe what is commonly Reported, how ſlight many great Patrons make of their Beſtowing of Benefices, by letting Servants make their beſt Advantage of them; who ſcandalouſly expoſe the Livings, and themſelves, and the Honour of thoſe they depend upon. If Servants deſerve to be gratified; for God's ſake, let it not be at the Price of Souls. If there were no ſuch thing as Religion; but that the pretended Care of Souls is nothing but an Artificial way of Maintaining a Sett of Men, to keep the People in a little better Order, by telling them of Moral Duties, and another World; then there were ſome Colour for ſuch an Affected Negligence in theſe Matters: But I do not believe that any of theſe Perſons can ſatisfy

ſatisfy themſelves in ſuch Abſurd and Unreaſonable Imaginations; againſt the Senſe of all the Wiſer and more Conſiderate part of Mankind. But it cannot be denied, that the Things which they are to Teach the People in point of Morality, are very good things, and neceſſary to be told them. This is all I deſire at preſent. And is it of no Conſequence, what ſort of Men thoſe are, who are entruſted with the Teaching People their Duties to God and Man? If Religion were only to be regarded in point of Policy; thoſe muſt be far from *Politicians*, who have no regard to the Qualifications of the Perſons they put into ſuch Places. For Ignorant and Illiterate Men can never give them good Inſtructions; Scandalous and Debauched Perſons will certainly do abundance of Miſchief, making

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the People more looſe and debauched than otherwiſe they would be. Men of ill Principles will inſtill them into the Heads of the buſy part of thoſe they converſe among, and take upon them to guide; and make them far more ungovernable than otherwiſe they would be. I have no very great Opinion of the World as it is; but I cannot but think, that it would be yet much worſe, if an Ignorant, Vicious, Turbulent, Seditious Clergy were put into all ſuch Places as Patrons diſpoſe of: and they know not, but they may be all ſuch whom they Preſent, if they take no more care about them; but ſuffer their Servants to make what Bargains they think fit; who mind not the Men, but the Advantage they are to get by them. And there is a juſt Preſumption, that thoſe are not very Deſerving, who are ready

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to drive ſuch Bargains for themſelves: and ſuch Men are not to be valued, as Cattle in a Market, by the Money they will yield.

2. That Lawyers would not encourage their Clients in indirect methods of obtaining Preſentations. For here lies a great part of our preſent Miſchief: the Clergymen who want Benefices, They ſay; We are Ignorant of the Law; but we go to thoſe whoſe buſineſs it is to underſtand it: and they tell us, they have Caſes and Precedents in their Books, for ſuch Bonds; and they have been many times adjudged in the Courts of Law to be good; and therefore why are we to blame if we ſubmit to them? But here lies the great Miſtake: the Point is really a Point of Conſcience as to the Oath; but the Queſtion put to them can be only a Point

Point of Law; who are to give Judgment upon the Statute, and according to the Rules of Judgment allowed in their Courts. But I cannot but obſerve, that there is no Precedent offer'd before 8 *Jac.* 1. and in the 15*th.* was a contrary Judgment. In the Beginning of *Charles* I. the former Judgment was affirmed; and from hence it hath come to be ſuch a prevailing Opinion. I confeſs, that I am not ſatisfied, how far ſuch Precedents, or one or two Judicial Sentences make a thing to paſs for Law; nor whether the Authority of ſuch a Sentence, or the Reaſon, is to give the Force of Law to it. I obſerve that my Lord *Coke*, when he ſpeaks of the Laws of *England*; he reckons up *Common-Law*, *Statute-Law*, *Cuſtoms reaſonable* &c. but he never mentions the Judgment of the Courts,

1. Inſt. 11. 110. b. 115. b.

Courts, as any Part of our Law; they being no more but a Declaratory Sentence of the Majority of the Judges, when it may be the other differ upon better Reaſons; and when ſuch Reaſons come to be thought better by one more at another time, then the contrary muſt paſs for Law on the ſame grounds. How often do we hear that the Judges were divided in their Opinions in point of Law? How often, that the greater number went one way, but Law and Reaſon on the other? Suppoſe a Lord Chief Juſtice of great Skill and Knowledge in the Law, to be unequally yoked with others of far leſs Judgment; how is it poſſible to prevent that Judgment ſhall not be given on the wrong ſide, if the three happen to be of an Opinion againſt him; or

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one be abſent, and two be againſt one? In a late great Cauſe, *viz.* of *Commendam*; although three Judges concurred in Opinion, and the General Practiſe was allowed to be of that ſide; yet becauſe one Judge differ'd from the reſt, his Authority was produced againſt the Sentence of the Court: and for what Cauſe can this be, but the Suppoſition, that it is not the Sentence, but the Reaſon which makes the Law. My Lord Chief Juſtice *Hales* in a MS. Diſcourſe of *the Hiſtory and Analyſis of the Laws of* England, *Chap.* 4. makes three Conſtituents of the Common Law of *England*: 1. *The Common Uſage and Cuſtom*: 2. *The Authority of Parliament*: 3. *The Judicial Deciſions of Courts of Juſtice*: but how? *Conſonant to one another in the Series and Succeſſion of Time.*

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This is ſpoken with great Judgment: For, no doubt, a mighty Regard ought to be ſhewed to a Concurrent Senſe of ſo many Perſons of Ability in the Law, in the different Times wherein ſuch Matters have been before them; and this is the higheſt Authority for expounding the Law; but it cannot amount to the Making of a Law. For, as the ſame Excellent Perſon adds; *It is true, the Deciſions of Courts of Juſtice, although by the ſtrength of the Law of this Kingdom, they do bind as a Law between the Parties to it in that particular Caſe in Queſtion, till Reverſed by Error or Attaint; yet they do not make a Law: for that only the King, by the Aſſent of Parliament, can do.* All that I aim at, is not in the leaſt to take off from the Authority and Reverence due to Judicial

cial Deciſions, built upon a General Agreement from time to time; or upon Evident Reaſon in point of Law: but only that things ſhould not be ſo poſitively aſſerted to be Law, which are built only on a few Modern Precedents, without any convincing Evidence. Which I take to be the preſent Caſe.

3. That the Clergy would mind their own Honour and Intereſt, and that of the Church and Religion ſo much, as not to Accept of Benefices upon ſuch Enſnaring Terms, as thoſe of Bonds of Reſignation.

If what I have ſaid on this Argument be true; I am ſure they have all the Reaſon in the World to Refuſe them: when they know not what the Conſequence of them may be;

be; and they do know what kind of Oath they are to take. And no Man can honeſtly take an Oath, that is not ſatisfied, that ſuch Bonds are no *Simoniacal Contract* in the Senſe of that Law, by which he is required to take the Oath. Now the Oath is not impoſed by the Courts of Common Law in purſuance of the Statute; for then it were to be underſtood according to the Senſe and Meaning of it; but that very Statute leaves *the Eccleſiaſtical Laws* as they were; by which *Simony* is of a larger Extent than it is underſtood *at Common Law*; and by thoſe Laws this Oath is required. Therefore my Requeſt is to all ſuch Clergymen, as are in danger of having ſuch put upon them; that they would ſtudy the Caſe, and ſatisfy their Minds before they venture upon

on taking an Oath; which may afterwards rob them of that Peace and Tranquillity of Mind, which every Good man will Eſteem above any Benefice in the World.

F I N I S.

Page 73. lin. 13. for *Gay:* read *Gayr.* Ibid. Marg. for *Mar.* read *Mayr.*

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